STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Virginia "Jenny" Gietl,

Petitioner,

14IWCC0341

vs. NO: 10 WC 27060

Lincoln Land Community College,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, causal connection, medical expenses, permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 5, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

14IWCC0341

No bond is required for removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAY 0 5 2014

David L. Gore

Stephen Mathis

Mario Basurto

DLG/gal
O: 4/24/14
45

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

GIETL, VIRGINIA "JENNY"
Employee/Petitioner

Case# **10WC027060**

14IWCC0341

LINCOLN LAND COMMUNITY COLLEGE
Employer/Respondent

On 7/5/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1590 SGRO HANRAHAN & BLUE LLP
ALEX B RABIN
1119 S 6TH ST
SPRINGFIELD, IL 62703

0075 POWER & CRONIN LTD
ANDREW M LUTHER
900 COMMERCE DR SUITE 300
OAKBROOK, IL 60523

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION 14IWCC0341

VIRGINIA "JENNY" GIETL
Employee/Petitioner

v.

LINCOLN LAND COMMUNITY COLLEGE
Employer/Respondent

Case # 10 WC 27060

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of **Springfield**, on **June 10, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other

14IWCC0341

FINDINGS

On **January 27, 2010**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$44,746.64**; the average weekly wage was **$860.51**.

On the date of accident, Petitioner was **63** years of age, ***married*** with **0** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$0** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$0**.

Respondent is entitled to a credit of **$32,683.54** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services as set forth in Petitioner's Exhibits 5, 8, 11 and 12, as provided in Section 8(a) of the Act, and subject to the medical fee schedule, Section 8.2 of the Act. Respondent is entitled to a credit for medical bills paid by its group carrier under Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $573.67/week for 26 4/7 weeks, commencing 07/30/2010 through 09/13/2010, 09/20/2010 through 11/01/2010, 09/27/2011 through 11/19/2011, and 01/23/2012 through 03/05/2012, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the sum of $516.31/week for a further period of 82 weeks, as provided in Section 8(e) of the Act, because the injuries sustained caused the 20% loss of use to each hand.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

06/25/2013
Date

JUL 5 - 2013

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

14IWCC0341

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

VIRGINIA "JENNY" GIETL
Employee/Petitioner

v. Case # 10 WC 27060

LINCOLN LAND COMMUNITY COLLEGE
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDING OF FACT

On January 27, 2010, Petitioner, Virginia "Jenny" Gietl, was employed by Respondent, Lincoln Land Community College, as a Veterans Financial Aid Advisor. Petitioner was 63 years of age at the time of the claimed repetitive trauma accident. She worked for Respondent for approximately 27 years. Petitioner was originally hired to work in the Respondent's book store for two and a half years before being transferred to the Veterans' Affairs department. Petitioner testified that she served Veterans Affairs from that time until her retirement on May 31, 2012.

Evidence submitted at trial showed that Petitioner's position required repetitive hand motions. The job description submitted by both parties requires "computer competency." (Petitioner's Exhibit (PX) 2; Respondent's Exhibit (RX) 5). Petitioner testified that she worked on the computer for approximately seven and a half hours out of a nine hour day. This included, but was not limited to, answering e-mails from students or other college employees and entering data into the computer for financial aid. She also used a calculator alongside the computer frequently. Additionally, Petitioner would be on the phone often. She testified that she would often have the phone tucked into her neck while on the computer during most of the work day. She also had to enter data into the computer for student records or financial aid.

On February 26, 2010, Petitioner was referred to neurologist Dr. M.L. Mehra, for symptoms that resembled that of carpal tunnel syndrome, by her family physician, Dr. Daniel O'Brien. (PX 3). Starting in 2009, Petitioner testified that her hands would get numb and tingle regularly, and she would drop things. She had lost grip strength in both hands. Petitioner told Dr. Mehra that she was experiencing these symptoms for a year or two. Dr. Mehra noted that Petitioner had "[m]arked atrophy of the right and to some extent the left thenar muscle." (PX 3). During his deposition, Dr. Mehra testified that the median nerve was compressed. (PX 4, pp. 8-9). Dr. Mehra's clinical impression was severe denervating, right worse than left, carpal tunnel syndrome. He then recommended a surgical decompression. (PX 3). In a letter dated July 6, 2010, Dr. Mehra wrote a work restriction letter for Petitioner. In the letter, Dr. Mehra stated that

Petitioner's carpal tunnel syndrome "is directly related to the repetitive hand movements she does at her work at Lincoln Land [Community] College." (PX 3).

Petitioner then presented to Dr. Reuben Bueno's office on March 30, 2010, and was seen by Dr. Brian Derby. Dr. Derby noted that certain activities Petitioner performed, like typing most of the day, exacerbated her symptoms. Dr. Derby recommended surgery, and reported that the proposed surgery would be "workmen's comp." (PX 6).

Petitioner returned to Dr. Bueno's office on July 15, 2010, and saw another doctor in that office, Dr. Ryan Diederich. He noted that a right carpal tunnel surgery would be scheduled first, and then a month later, they would perform a left carpal tunnel release. Petitioner agreed to all procedures and verbalized understanding of all the risks involved with carpal tunnel release surgery. (PX 6).

Petitioner underwent surgery for her right hand on July 30, 2010. She was discharged home and returned for a check-up visit on August 17, 2010. Petitioner complained of stiffness and some discomfort with movement, mostly in her thumb. Dr. Bueno recommended that she discontinue the use of the splints because it was causing persistent redness. He then referred Petitioner to the hand therapy department to start motion exercises. Petitioner was kept off work at this time. (PX 6).

Petitioner returned to Dr. Bueno on August 24, 2010, complaining of pain and achiness in her right palm. Worried about hampering her ability to perform daily activities without the use of both hands, Dr. Bueno rescheduled her left carpal tunnel release surgery. Additionally, he gave her a compression glove to suppress the swelling in her thenar area and wrist. On September 7, 2010, Petitioner returned for a follow-up visit. She still experienced some pillar pain and achiness. Dr. Bueno told Petitioner that she would have to start on an anti-inflammatory sooner rather than later to combat potential swelling. Petitioner had been off work since the July 30 surgery, and at the September 7, 2010 evaluation, Dr. Bueno released Petitioner to return to work regular duty effective September 13, 2010. (PX 6).

Petitioner underwent left carpal tunnel release surgery on September 20, 2010. Dr. Bueno then prescribed Norco for her pain and scheduled a follow-up visit. This visit occurred on September 28, 2010, and Petitioner's chief complaint described that day was pain in the forearm. Petitioner was not yet released to return to work from her left carpal tunnel surgery on this date. Petitioner had her sutures removed on October 12, 2010. Dr. Bueno also noted that he would keep Petitioner off work at this time until November 1, 2010. (PX 6).

Petitioner returned to Dr. Bueno for another follow-up evaluation on October 26, 2010. Dr. Bueno noted that Petitioner may "be in that group of patients who is predisposed to getting carpal tunnel, and repetitive activities may have played a role in the development of the carpal tunnel..." Additionally, Dr. Bueno told Petitioner that if she returned to performing the repetitive activities that caused her carpal tunnel syndrome, "she may demonstrate signs of recurrence." Dr. Bueno reported that Petitioner's repetitive activities may have played a role in the development of her condition. (PX 6).

On her eight week post-operative visit on November 18, 2010, Petitioner returned to Dr. Bueno with complaints of persistent pain and swelling. Additionally, she stated that she returned to work, but she still had continuing throbbing pain that radiated up her arm. Dr. Bueno was concerned that Petitioner was developing complex regional pain syndrome. He recommended that Petitioner attend hand therapy three times per week, and that she use her hand as much as possible. When she returned on December 2, 2010, Petitioner had made significant improvement with the pain and swelling in her left hand, thereby ruling out complex regional pain syndrome. (PX 6).

Petitioner returned to Dr. Bueno's office on February 3, 2011. She continued to have pillar pain and swelling in her left hand despite continued therapy. She was also experiencing a recurrence of the symptoms she had prior to her left carpal tunnel release. Dr. Bueno noted that Petitioner's " return to work at the same workstation that she had been at before, leaving her hands in an extended position and pressure on the carpal tunnel, may be exacerbating these symptoms." Petitioner returned on February 17, 2011, and Dr. Bueno again noted that her work may have exacerbated her symptoms. He noted that Petitioner was continually working with a computer and mouse throughout the day, and with that amount of time at the computer, her wrist and hands could have been in a position which could have exacerbated some of her symptoms. (PX 6).

On May 11, 2011, Petitioner returned to Dr. Mehra with complaints of continued pain in her hands. Dr. Mehra noted that she still had atrophy of both thenar muscles. Her Tinel and Phalen signs were positive for carpal tunnel syndrome. He then diagnosed Petitioner with post carpal tunnel syndrome with incomplete recovery. Dr. Mehra noted that her carpal readings were not within normal limits but recommended that they wait a year before re-exploration. (PX 3).

On August 3, 2011, Petitioner sought a second opinion from Dr. Mark Greatting. When asked on the intake form whether her symptoms interfered with or were aggravated by her job, Petitioner indicated "yes." Dr. Greatting, noting that Petitioner had recurrent bilateral carpal tunnel syndrome, reported that it would be reasonable to proceed with another right carpal tunnel release. If that surgery relieved her pain, they would proceed with another left carpal tunnel release. She underwent this surgery on September 27, 2011. (PX 9).

Petitioner returned to Dr. Greatting for a follow-up visit on October 12, 2011. She reported that her hand felt much better and the numbness has improved. Dr. Greatting recommended that she not lift anything over five pounds, but she could increase her activities as tolerated. He kept her off work at this time (she had been off work since the September 27, 2011 surgery at this point). (PX 9).

On November 23, 2011, Petitioner's symptoms had markedly improved. Dr. Greatting released Petitioner to return to work the following Monday. (PX 9). However, Petitioner is only claiming temporary total disability (TTD) benefits for this particular time off commencing with the September 27, 2011 surgery until November 19, 2011. (See Arbitrator's Exhibit 1). It was determined at the November 23, 2011 evaluation that if Petitioner did well with the right hand while at work, Dr. Greatting would proceed with left carpal tunnel release surgery. (PX 9).

When Petitioner returned to Dr. Greatting's office on January 5, 2012, she stated that she could use her right hand without restrictions. Noting the success of the surgery on her right hand, Dr. Greatting scheduled a carpal tunnel release on her left hand. This surgery was performed on January 23, 2012. When Petitioner returned for follow-up evaluation on February 7, 2012, her pain and numbness had significantly improved and was almost resolved. Dr. Greatting kept Petitioner off work from her surgery on January 23, 2012 until March 5, 2012. (PX 9).

When asked during his deposition whether Petitioner's job duties caused or contributed to her bilateral carpal tunnel syndrome, based on his review and understanding of Petitioner's job description and his understanding of her job duties, Dr. Mehra testified that professions requiring repetitive hand movement, like typing, contribute to carpal tunnel syndrome. He further testified that Petitioner informed him she performed a lot of repetitive hand movement with her job. (PX 4, p. 14). As stated, *supra*, Dr. Mehra reported in his July 6, 2010 letter that Petitioner's carpal tunnel syndrome "is directly related to the repetitive hand movements she does at her work at Lincoln Land [Community] College." (PX 3).

Dr. Bueno testified during his deposition that, based on Petitioner's job history provided to him, and her resulting medical problems, that Petitioner's duties on a keyboard most of the work day may have contributed to her carpal tunnel syndrome. (PX 7, p. 9).

Dr. Greatting testified during his deposition that he did not discuss Petitioner's job activities with her much during the course of his treatment of her. He did, however, review Petitioner's job description. (PX 10, p. 11). When asked whether he had an opinion as to whether prolonged office work with keyboarding, writing and telephone use could cause or contribute to carpal tunnel syndrome, Dr. Greatting testified that if a patient's symptoms are "a lot worse or aggravated while doing their work activities" then he generally believes that the patient's work activities at least aggravate the problem. (PX 10, p. 12). As stated *supra*, when asked on Dr. Greatting's intake form whether her symptoms interfered with or were aggravated by her job, Petitioner indicated "yes." (PX 9).

Petitioner presented for evaluation at Respondent's request pursuant to Section 12 of the Illinois Workers' Compensation Act, 820 ILCS 305/1 *et seq.* (hereafter the "Act") with Dr. Henry Ollinger on June 17, 2010. Dr. Ollinger reviewed Petitioner's job description and took an oral history of her job duties. (RX 1). Dr. Ollinger diagnosed Petitioner with osteoarthritis at the bases of both thumbs and bilateral carpal tunnel syndrome. (RX 2, p. 14). Dr. Ollinger did not believe that Petitioner's job duties with Respondent caused or aggravated her bilateral carpal tunnel syndrome. (RX 2, pp. 15-16). Dr. Ollinger testified that Petitioner's work was clerical in nature and did not have any of the clear factors he looks for when diagnosing repetitive trauma injuries like carpal tunnel syndrome. The doctor noted that Petitioner's job was not high force and did not require lifting of heavy weights. He also noted that Petitioner's job did not require prolonged flexion or extension of her wrists. (PX 2, pp. 16-17). Dr. Ollinger testified that he believed Petitioner's bilateral carpal tunnel syndrome was caused by her innate lifestyle and the medical risks associated with her age and gender, in addition to the osteoarthritis in her thumbs. (RX 2, pp. 18-19).

In his report, Dr. Ollinger reported that Petitioner's keyboarding was not "hand intensive" and followed this statement with a parenthetical that stated, "as would be for a persons (sic) doing continued prolonged medical or legal transcription or pure data entry as the only job requirement." Dr. Ollinger testified that if there is "prolonged, continued and...high volume keying, which by nature would be text keying because it is two-handed, it can be a factor in a carpal tunnel case." (RX 2, pp. 31-32).

On May 7, 2013, Dr. Ramsey Ellis conducted a medical records review at the request of Respondent. Dr. Ellis' diagnosis of Petitioner, based on the records review, was that of post right and left carpal tunnel release for recurrent carpal tunnel syndrome, as well as bilateral thumb osteoarthritis. Dr. Ellis did not believe that Petitioner's conditions were related to her work duties, specifically because "carpal tunnel syndrome has only been linked to highly repetitive flexion and extension of the wrists coupled with forceful grasping or the prolonged use of hand-held vibratory tools." Dr. Ellis believed that Petitioner's bilateral carpal tunnel syndrome was related to her age and gender. (RX 3).

On cross-examination, Petitioner testified that she starting noticing her symptoms "more and more" in 2009, but that she did not know at the time that she was indeed suffering from carpal tunnel syndrome. When asked if she had come to recognize that she suffered these symptoms for twenty years, Petitioner testified that she could have had some symptoms over this period, but not nearly as severe as the symptoms she reported in 2009-2010. She also testified that during the period asked about, she did not even know what carpal tunnel syndrome was.

Petitioner testified she was initially reluctant to return to work after her second surgeries but did so anyway. Petitioner testified that she retired shortly thereafter because she believed she needed to retire, despite wanting to work longer. Petitioner testified that she enjoyed her job. She testified that her hands and wrists today are "good," and that if she would have known they would have felt this good she would have reconsidered retirement.

Petitioner offered into evidence a series of medical bills she claims she incurred as a result of the treatment received for the injuries claimed at bar. (See PX 5, 8, 11, & 12).

CONCLUSIONS OF LAW

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; and

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

The Arbitrator finds that Petitioner's bilateral carpal tunnel syndrome, and the subsequent recurrent bilateral carpal tunnel syndrome, arose out of and in the course of her employment by Respondent based on the medical records and deposition testimony of Drs. Mehra, Bueno, and Greatting, as well as the credible testimony of Petitioner. Dr. Mehra's letter of July 6, 2010 demonstrates this connection based on discussions with Respondent. Dr. Bueno and Dr. Greatting also testified that, within a reasonable degree of medical certainty, the repetitive motions that Petitioner performed while at work as described to them may have brought on the

pain and numbness in her hands, which in turn exacerbated her bilateral carpal tunnel syndrome to the point of necessitating surgical releases.

Respondent has tendered two expert witnesses. The Arbitrator does not find these witnesses to be as persuasive as the doctors that treated and interacted with Petitioner. Dr. Ollinger testified that he believed Petitioner suffered from bilateral carpal tunnel syndrome; he just did not believe her job duties caused or aggravated it. Dr. Ollinger did concede that "prolonged, continued and...high volume keying, which by nature would be text keying because it is two-handed...can be a factor in a carpal tunnel case." (RX 2, pp. 31-32). While Dr. Ollinger did not believe Petitioner's duties brought her to the level of repetitive typing that could cause carpal tunnel syndrome, the Arbitrator finds that the majority of evidence, including Petitioner's credible testimony, indicate that she did in fact spend most of her time using a keyboard. The records of Dr. Bueno and Dr. Derby further indicate that certain activities Petitioner performed, like typing most of the day, exacerbated her symptoms. (See PX 6). Additionally, the Arbitrator finds the opinion contained in the records review by Dr. Ellis is not as persuasive, as Dr. Ellis did not meet with Petitioner and looked only at the records submitted to him.

Further, the Arbitrator finds that Petitioner was a credible witness at trial. On direct examination, Petitioner testified in great detail as to her job duties and the process by which her position and her overall department operates. On cross-examination, when repeatedly asked if Petitioner had carpal tunnel symptoms over the past several years, she calmly and in a forthcoming manner testified that she has had various hand and wrist symptoms over the years, but did not even know what carpal tunnel syndrome was until around 2009-2010, when her symptoms progressed to the point of requiring treatment. Petitioner worked for Respondent for approximately 27 years, and performed the same repetitive duties for 25 of those years until her retirement in May 2012. Petitioner was open and forthcoming, and endeavored to be truthful during her entire testimony, and great weight is placed in this regard.

Based on the testimony and medical evidence submitted at trial, the injuries arose from and are causally connected to Petitioner's employment.

Issue (J): Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

Petitioner is claiming Respondent is liable for the following medical bills:

- Dr. Mehra: $3,201.00 (PX 5)
- SIU Healthcare (Dr. Bueno and Hand Therapy): $10,729.88 (PX 8)
- Springfield Clinic (Dr. Greatting): $12,818.00 (PX 11)
- Clinical Radiologist: $51.00 (PX 12)

The treatments for Petitioner's injuries are reasonable and necessary. Therefore, Respondent shall pay the aforementioned amounts which represent the reasonable expenses in the treatment of Petitioner's injuries, subject to the medical fee schedule, Section 8.2 of the Act.

Issue (K): What temporary benefits are in dispute? (TTD)

Petitioner was temporarily and totally disabled for various periods throughout the course of her treatment, totaling 26 4/7 weeks of benefits. Petitioner was off work from her first right carpal tunnel release from July 30, 2010 (the date of surgery) through September 13, 2010 (when she was released by Dr. Bueno). She was next off work due to her first left carpal tunnel release from September 20, 2010 (the date of surgery) through November 1, 2010 (when she was released by Dr. Bueno). Petitioner suffered a recurrence of her carpal tunnel syndrome, and underwent two more surgical releases to each side. She was off work from the second right carpal tunnel release from September 27, 2011 (the date of surgery) through November 19, 2011 (the date Petitioner claims she returns, despite a formal subsequent release by Dr. Greatting on November 28, 2011). She was next off work due to her second left carpal tunnel release from January 23, 2012 (the date of surgery) through March 5, 2012 (when she was released by Dr. Greatting). Respondent shall pay Petitioner the amount of compensation representing her total TTD benefits for the aforementioned periods, pursuant to Section 8(b) of the Act.

Issue (L): What is the nature and extent of the injury?

As stated, *supra*, Petitioner's bilateral carpal tunnel syndrome was at the very least aggravated by her repetitive work duties. This necessitated bilateral carpal tunnel surgical releases. When Petitioner's symptoms persisted following these surgeries, it was established that she then suffered from recurrent bilateral carpal tunnel syndrome, for which she underwent two more surgical releases to each side.

Petitioner testified that currently, her hands and wrists are "good." She testified that she believed she needed to retire a couple months after returning to work following her final surgery. Dr. Bueno in fact warned Petitioner following her first two surgeries that continued repetitive duties like the ones she was performing could cause a recurrence of her bilateral carpal tunnel syndrome, which did in fact happen after the first two surgeries. However, her symptoms eventually alleviated some time after the second surgeries and her retirement, and she testified that she would not have retired had she known how good the results would have been. Therefore, her decision to retire, while not recommended by a physician, is also not entirely unreasonable given the circumstances.

Based on the foregoing, the Arbitrator finds that Petitioner has suffered the 20% loss of use to each hand pursuant to Section 8(e) of the Act, and she is awarded permanent partial disability benefits accordingly.

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Darryl Lamb,

Petitioner,

14IWCC0342

vs.

NO: 13 WC 16892

Westaff/ Select Staffing,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, medical expenses, causal connection, penalties and attorney's fees, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 29, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $46,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAY 0 5 2014

David L. Gore

Stephen Mathis

Mario Basurto

DLG/gal
O: 4/24/14
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ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

LAMB, DARRYL
Employee/Petitioner

Case# **13WC016892**

14IWCC0342

WESTSTAFF/SELECT STAFFING
Employer/Respondent

On 10/29/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

2046 BERG & ROBESON PC
STEVE W BERG
1217 S 6TH ST PO BOX 2485
SPRINGFIELD, IL 62705

0332 LIVINGSTONE MUELLER ET AL
L ROBERT MUELLER
620 E EDWARDS ST PO BOX 335
SPRINGFIELD, IL 62705

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

14IWCC0342

DARRYL LAMB
Employee/Petitioner

v.

WESTAFF/SELECT STAFFING
Employer/Respondent

Case # 13 WC 16892

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of **Springfield**, on **September 16, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other

FINDINGS 14IWCC0342

On **March 24, 2013**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$17,160.00**; the average weekly wage was **$330.00**.

On the date of accident, Petitioner was **47** years of age, ***single*** with **0** dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$1,100.00** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$1,100.00**.

Respondent is entitled to a credit of **$0** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services as set forth in Petitioner's Exhibit 2 and as delineated in the Memorandum of Decision of Arbitrator, as provided in Section 8(a) of the Act, and subject to the medical fee schedule, Section 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $220.00/week for 22 weeks, commencing 04/16/2013 through 09/16/2013, as provided in Section 8(b) of the Act.

Penalties and attorney's fees are not imposed upon Respondent.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

10/25/2013
Date

ICArbDec19(b)

OCT 29 2013

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

14IWCC0342

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

DARRYL LAMB
Employee/Petitioner

v. Case # 13 WC 16892

WESTAFF/SELECT STAFFING
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

Petitioner, Darryl Lamb, testified that on March 24, 2013, he was working for Respondent, Westaff/Select Staffing. Respondent is a temporary employment agency, and Petitioner was working for a cleaning company called New Air at the Caterpillar, Inc. (CAT) plant in Decatur, Illinois. New Air had a contract with CAT. Petitioner noted he had been working about seven months at the CAT facility through New Air. During his entire tenure with Respondent, Petitioner worked through New Air. His job duties from Monday to Thursday were general "clean up." On Sunday, his job was "maintenance" and he would be scraping paint off windows in the primer booth. Petitioner indicated he worked seven hours per day, Monday through Thursday, and then a 12 hour shift on Sunday, starting at 7:00 a.m.

On March 24, 2013 (a Sunday), Petitioner testified he was scraping paint off of the glass windows. Petitioner was using a seven inch scraper to scrape the paint off the glass, as well as a water-Windex solution to help break down the paint. He testified that it was very difficult to scrape the paint. At trial, Petitioner demonstrated the arm motions of scraping the paint in question, and it was noted that considerable arm effort was involved in performing the scraping motions. At about 9:30-10:00 a.m., Petitioner testified that he felt a "pull" in his left shoulder. He had been scraping paint since his shift began at 7:00 a.m. He indicated that he stopped scraping and told his manager, Kenny Cox with New Air, that he pulled something in his shoulder. Petitioner stated that his instructions were to report any injury to the New Air supervisor, which was Mr. Cox. Petitioner testified that upon telling Mr. Cox of his injury, Mr. Cox replied that Petitioner would be "ok" and then he left on his golf cart. Petitioner testified that Mr. Cox did not write anything down concerning his reporting of an accident, nor did Mr. Cox provide Petitioner any forms or paperwork concerning the reporting of a work accident.

On approximately the following Monday, Petitioner testified that he telephoned Respondent, and left several messages with a gentleman there about calling him back regarding his work accident. He testified he never indeed spoke with his supervisor with Respondent, Bonnie Knuth. After he never received any phone responses, Petitioner testified that he sent Ms. Knuth a letter via certified mail on April 12, 2013, informing her of his work accident. (See Petitioner's Exhibit (PX) 1).

Petitioner completed the day at work on March 24, 2013, but he used his right arm instead of his left arm the rest of the day in performing his work duties. Petitioner stated that he worked the following week after March 24, 2013. Petitioner testified that he believed he suffered from a simple strain-type injury, and therefore did not seek immediate medical care and continued to work. Petitioner was subsequently laid off from employment. When the pain persisted, Petitioner testified that he then sought treatment at St. Mary's Hospital on April 13, 2013. At St. Mary's, Petitioner gave a history of the March 24, 2013 incident at work, in that he felt a pulling sensation in his left shoulder when scraping paint off of a window. X-rays were taken that day, and a diagnosis was made of shoulder sprain. (PX 3). Petitioner denied any intervening injury to his shoulder between the claimed date of accident and the date he sought care at St. Mary's. Petitioner also denied any prior symptoms or injuries to his left shoulder prior to the claimed date of accident. Petitioner is left hand dominant.

Dr. Steven Taller from St. Mary's referred Petitioner to his primary care provider, Family Nurse Practitioner (FNP) Jessica Sullivan, at Community Health Improvement Center. (PX 3; PX 4). On April 16, 2013, FNP Sullivan recommended an MRI, prescribed pain medication, and took Petitioner off of work. (PX 4). Petitioner underwent the MRI on April 19, 2013 at Decatur Memorial Hospital, which revealed a full thickness rotator cuff tear. (PX 4). Petitioner was again evaluated by FNP Sullivan on May 22, 2013. (PX 4). FNP Sullivan referred Petitioner to Dr. John Britt, an orthopedic surgeon. Dr. Britt performed surgery to Petitioner's left shoulder on June 14, 2013, consisting of an open left rotator cuff repair, an arthroscopic left Neer acromioplasty, and an arthroscopic exam to the left glenohumeral joint. The post-operative diagnosis was a focal full-thickness non-retracted small left rotator cuff tear (supraspinatus) and focal stable anterior labral tear to the left shoulder joint. (PX 7). Petitioner was kept off of work or given modified duty restrictions of no lifting with the left arm per Dr. Britt, and as of the date of trial, those restrictions were still in place. (PX 5; PX 7). Petitioner returned to FNP Sullivan's office on August 12, 2013, and further pain medication was prescribed. (PX 4). Petitioner is currently in post-operative physical therapy, and attends therapy sessions four times per week. (PX 8). Petitioner denied any subsequent injury to his left shoulder following the surgery.

Petitioner testified that he has received a payment from Respondent in the amount of $1,100.00, but that no other benefits have been provided to him. He further testified that none of the medical bills incurred have been paid. He denied having health insurance through Respondent when he was employed there. Petitioner offered a series of medical bills into evidence that he claims he incurred as a result of the injury. (PX 2). Petitioner testified that the medical bills from St. Mary's are not itemized. He testified that the bill from service date June 10, 2013 was for pre-operative blood and lab work. He also noted an emergency room bill, and believed said charge was due to an episode where his therapist believed she saw puss in his arm and had to make sure it was not infected.

Bonnie Knuth testified at Respondent's request. She works for Respondent as a supervisor. She confirmed that Respondent is a temporary agency. She noted that Petitioner was one of the individuals that she supervised and placed in a job. Ms. Knuth indicated that there was policy and

procedure with regard to reporting a workers' compensation injury. She indicated that the safety examination sheet was filled out by Petitioner at the time he applied for employment. (See RX 1). She indicated that paragraph 7A on that sheet notes that if a work injury occurs, it should be reported to the client's supervisor on duty, and then to immediately call the staffing supervisor. Ms. Knuth indicated that she was the staffing supervisor. She noted on the form that Petitioner indicated that he understood 7A to be correct. Ms. Knuth testified that she never received a message that Petitioner tried to call her. The first indication she had that Petitioner was claiming a workers' compensation injury was with receipt of the April 12, 2013 letter he sent to her. (See PX 1). After receiving that letter, she testified that she tried to contact Petitioner on a number of occasions and left a message on one occasion. She testified that she never received a return call. She testified that she also never heard from New Air that Petitioner was claiming an injury.

Petitioner testified that he lives with his mother, and that he asked his mother when he was out during the dates in question whether he received a phone call from Ms. Knuth, and his mother replied that he did not. Concerning Respondent's Exhibit 1, Petitioner testified that when he initially met with Ms. Knuth about the job with Respondent, he was required to sign numerous forms, and that said forms were not explained in detail. He confirmed that his signature was on Respondent's Exhibit 1, but that he does not recall that particular form, as there were many forms he had to complete.

CONCLUSIONS OF LAW

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

On March 24, 2013, Petitioner was an employee of Respondent, who was working for an organization called New Air at the CAT plant located in Decatur, Illinois. On that date, Petitioner was using a scraper to scrape paint off of equipment glass. He testified that the paint was difficult to remove and it took considerable effort to scrape the paint off of the glass. Petitioner demonstrated the scraping motion at trial, and the Arbitrator made note of the arm movements of which Petitioner was engaged when scraping. As Petitioner was scraping the paint, he felt a pain and pulling sensation in his left shoulder. Corroborating history of Petitioner's injury appears in the medical records at St. Mary's Hospital, Community Health Improvement Center (FNP Sullivan), and records from the treating orthopedic surgeon, Dr. John Britt. Petitioner also submitted a written accident report to Respondent since his supervisor did not initiate any kind of report when the accident occurred. Mr. Cox was not called as a witness to refute Petitioner's testimony. Further, both Petitioner and Ms. Knuth acknowledged that the first person to whom an injury should be reported would have been the supervisor with New Air, which was Mr. Cox. Ms. Knuth testified that the next reporting step would have been to report the injury to her, and that she did not receive notice until Petitioner sent his letter of April 12, 2013. (See PX 1). Petitioner testified that he tried calling Ms. Knuth before he sent the letter, and left messages with a male employee to return his call. Petitioner testified that the messages were never returned. The letter from Petitioner gives a detailed and corroborating account of his accident, as well as Petitioner's statement that Mr. Cox did nothing when notified of the injury. Further, that letter corroborates Petitioner's believable and reasonable testimony that he initially thought he suffered nothing more than a strain-type injury, and continued working until the pain progressed to the point where he sought medical care.

Petitioner testified that he had pain contemporaneously with the scraping incident and that he had no prior injuries to or problems with his left shoulder before his accident of March 24, 2013. The Arbitrator

found Petitioner to be a credible witness at trial. He testified in an open and forthcoming manner, including on cross-examination. He appeared to be endeavoring to give the full truth during his testimony. Great weight is placed on Petitioner's credibility when determining the conclusions concerning the issue of accident. Therefore, the Arbitrator finds that Petitioner suffered an accident on March 24, 2013 that arose out of and in the course of his employment by Respondent.

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

As indicated above, Petitioner credibly testified that prior to his accident of March 24, 2013, he was not experiencing any difficulty with, nor had he had any injuries to, his left shoulder. Petitioner explained in his accident report submitted to Respondent that he had originally thought he had just pulled a muscle and was hoping that the condition would improve on its own. Petitioner was reluctant to obtain medical care because he had no health insurance. (See PX 1).

When Petitioner's condition did not improve and actually continued to worsen, Petitioner initially sought treatment at St. Mary's Hospital, where he was diagnosed with a shoulder sprain. Those records indicate that the medical condition was associated with Petitioner's accident at work on March 24, 2013.

Petitioner treated at Community Health Improvement Center, where his condition was associated with his work injury of March 24, 2013. After an MRI of his left shoulder revealed a torn rotator cuff, Petitioner was referred on to an orthopedic specialist. Petitioner's treating orthopedic surgeon, Dr. Britt, related Petitioner's complaints to his work injury where he was scraping windows. Dr. Britt performed surgery on Petitioner's shoulder on June 14, 2013, and at the time of trial, Petitioner was still undergoing post-operative treatment for his condition.

The Arbitrator finds Petitioner's testimony to be credible that he felt immediate pain while scraping the paint on the window at work on March 24, 2013, and further finds that Petitioner did not have any intervening injuries involving his left shoulder between that incident and his date of surgery, as well as the date of trial. The Arbitrator thus finds that Petitioner's current condition of ill-being is causally related to his March 24, 2013 accident.

Issue (J): Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

Petitioner's Exhibit 2 consists of various medical bills that have previously been provided to Respondent. The Arbitrator finds the following bills to be reasonable and necessary and related to Petitioner's accident of March 24, 2013. Respondent is ordered to pay these bills pursuant to the medical fee schedule set forth in Section 8.2 of the Illinois Workers' Compensation Act, 820 ILCS 305/8.2. The awarded medical bills (set forth in Petitioner's Exhibit 2) are as follows:

PROVIDER	DATE	AMOUNT	DESCRIPTION
Central Illinois Emergency Physicians	4-13-13	$243.00	Emergency room visit
Decatur Memorial Hospital	4-19-13	$2,549.57	MRI related charge
Decatur Radiology	4-19-13	$ 368.00	MRI related charge
Community Health Improvement	4-15-13	$ 15.00	FNP Sullivan visit

(this payment was made by Petitioner and should be reimbursed to Petitioner)

Wal-Mart	4-16-13	$ 18.17	Prescribed medication
	4-16-13	$ 4.00	Prescribed medication

(these amounts were paid by Petitioner and should be reimbursed to Petitioner)

Wal-Mart	5-22-13	$ 18.17	Prescribed medication
		$ 4.00	Prescribed medication

(these amounts were paid by Petitioner and should be reimbursed to Petitioner)

Community Health Improvement Ctr.	4-16-13	$ 104.00	FNP Sullivan
	5-22-13	$ 104.00	FNP Sullivan
St. Mary's Hospital	4-13-13	$1,230.56	X-rays
St. Mary's Hospital Clinic	6-10-13	$ 76.57	Pre-surgery work-up
Clinical Radiologist	6-10-13	$ 56.50	Pre-surgery x-ray
St. Mary's Hospital	6-14-13	$ 66.99	Pre-surgery work-up
St. Mary's Hospital	6-14-13	$36,522.28	Surgery
Central Illinois Assoc.	6-14-13	$ 3,100.00	Anesthesia for surgery
Community Health Improvement	5-22-13	$ 53.00	FNP Sullivan
St. Mary's Hospital	6-10-13	$ 974.01	Pre-surgery lab work
Community Health Improvement	8-12-13	$ 104.00	FNP Sullivan

Issue (L): What temporary benefits are in dispute? (TTD)

As a result of his injury of March 24, 2013, Petitioner was taken off work by FNP Sullivan at Community Health Improvement Center effective April 16, 2013. Petitioner was continued off work through his visit with orthopedic specialist, Dr. Britt. Petitioner was off work per Dr. Britt following surgery, and as of the date of trial, was on modified restrictions of no lifting of the left arm. Petitioner was laid off from Respondent in April 2013. Petitioner credibly testified that he has not been released to full duty work and is still undergoing treatment following his shoulder surgery. He is presently undergoing physical therapy for his shoulder.

Therefore, the Arbitrator finds that Petitioner is temporarily and totally disabled as a result of his injury of March 24, 2013, from the dates of April 16, 2013 through September 16, 2013, the date of trial. Temporary total disability (TTD) benefits are accordingly awarded for this period. Respondent shall be allowed credit for TTD benefits paid in the amount of $1,100.00. (See Arbitrator's Exhibit 1).

Issue (M): Should penalties or fees be imposed upon Respondent?

The Arbitrator does not find Respondent's denial of this claim to be unreasonable or vexatious, and therefore does not award penalties or attorney's fees against Respondent.

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Beverly Thomason (nka Beverly Clements),

Petitioner,

14IWCC0343

vs.

NO: 10 WC 22752

Airtex Products, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, causal connection, medical expenses, permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 22, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

14IWCC0343

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $46,200.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAY 0 5 2014

DLG/gal
O: 4/24/14
45

David L. Gore

Stephen Mathis

Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

THOMASON, BEVERLY (NKA CLEMENTS)
Employee/Petitioner

Case# **10WC022752**

08WC008037

11WC037713

AIRTEX PRODUCTS INC
Employer/Respondent

14IWCC0343

On 8/22/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0293 KATZ FRIEDMAN EAGLE ET AL
CHRISTOPHER MOSE
77 W WASHINGTON ST 20TH FL
CHICAGO, IL 60602

0180 EVANS & DIXON LLC
MARILYN C PHILLIPS ESQ
211 N BROADWAY SUITE 2500
ST LOUIS, MO 63102

STATE OF ILLINOIS)
)SS.
COUNTY OF JEFFERSON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

14IWCC0843

BEVERLY THOMASON (nka CLEMENTS)
Employee/Petitioner

v.

AIRTEX PRODUCTS, INC.
Employer/Respondent

Case # 10 WC 22752

Consolidated cases: 08WC8037&11WC37713

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on July 9, 2013. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other ___

FINDINGS

On December 18, 2007, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **$31,091.23**; the average weekly wage was **$653.69**.

On the date of accident, Petitioner was **66** years of age, married with **0** dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$0** for TTD, **$0** for TPD, **$0** for maintenance, and $ **0** for other benefits, for a total credit of **$0**.

Respondent is entitled to a credit for amounts paid under Section 8(j) of the Act.

ORDER

- The respondent shall pay the petitioner temporary total disability benefits of $ 435.79/week for 10-3/7 weeks, from July 23, 2010 through October 3, 2010, which is the period of temporary total disability for which compensation is payable.
- The respondent shall pay Petitioner the sum of $392.21/week for a further period of 99.45 weeks, as provided in Sections 8(e)(9) and 8(e)(10) of the Act, because the injuries sustained caused 15% loss of the left arm, 15% loss of the right hand, and 15% loss of the left hand, subject to a credit of 47.5 weeks of permanent partial disability under Section 8(e)(17) of for Petitioner's previous settlements for her left and right hands.
- The respondent shall pay Petitioner the sum of $2,643.00 for medical expense.
- The respondent shall have a credit for the amount paid for the short term disability by it's non-occupational disability carrier and its group health insurer, pursuant to Section 8(j) of the Act.
- The respondent shall further hold Petitioner harmless with respect to payments made by BlueCross BlueShield to Petitioner's medical providers for treatment related to her accidental injury and with respect to payments made by its non-occupational disability carrier pursuant to Section (j) of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

8/21/13
Date

AUG 22 2013

FINDINGS OF FACT

Petitioner was employed by Respondent for 33 years as a parts inspector in the receiving department. For 19 of those years, she worked as a parts inspector. Petitioner is diabetic, and has been for twenty-five years, though she testified that her diabetes is well-controlled through medication. Additionally, she also has taken medication for a thyroid problem for a long time.

Petitioner described her job in detail. As a receiving inspector, she would start by getting a box of parts which had been delivered, open it up, take the parts out and take them back to her desk. Petitioner's job was to check 32 parts in every delivery. She did this for either eight hours or ten hours per day. She testified that she did not have to rush while performing her job. Some of the parts she inspected had threaded holes and she would have to test the size and depth of these with a thread gauge. As a right-handed individual, she would do this by holding the part in her left hand with her wrist bent inwards and inserting the thread gauge with her right hand and twisting the thread gauge with her right hand in a rotating fashion. The thread gauge had two ends, one a "go" end and the other a "no go" end; she would first insert and twist the "go" end and then twist it out and insert and twist the "no go" end for each part. This process would take approximately two minutes to check each part. She demonstrated that her elbows would be bent while she performed this work.

Some of the parts she would inspect were small plastic pieces, and she would use calipers to measure them. There were different sizes of calipers, some of them six inches, some twelve inches, and some of them fourteen inches. She would hold the caliper in her right hand with her four fingers wrapped around the bottom and she extends her right thumb to slide the gauge to measure the outer dimension of the part. She would bend her right wrist back and forth in order to get the caliper to fit into the hole. Her left hand would pinch the part between her index finger and thumb and hold her hand and wrist steady. This process would take her approximately 30 seconds to adjust the caliper and get the measurement.of the part.

Other parts were inspected using a height gauge and an indicator. A height gauge is a large hand tool that she usually operated with her right hand and only seldomly with her left hand. While measuring with the height gauge, she would move her wrist back and forth to move her hand up and down to make sure that she measured the correct height.

After checking one box of parts, she would get the next box and then check 32 parts out of that. She testified that after checking 32 pumps, her right hand would get tired and she sometimes would use her left hand to turn the thread gauge.

Petitioner acknowledged that she did not do just one thing all day long when working as a receiving inspector. He job duties consisted of getting the boxes of parts she needed to inspect, opening it, selecting 32 parts to inspect, and inspecting them either with a thread gauge, a caliper, or a height gauge, depending upon the part. She would then return the parts to the box and decide whether or not to accept them or reject them.

Petitioner testified that she had previously developed carpal tunnel syndrome in both hands in approximately the year 2000. She had surgery to correct carpal tunnel syndrome in both hands at that time, but did not have any medical treatment for her left elbow. The medical records reflect that these surgeries were performed in 1994. (Px#7). She filed a workers' compensation claim for this and did receive a settlement for that claim. The amount of permanent disability in the settlement was 15% loss of use of the right hand and 10% loss of use of the left hand.

In 2010, she began to develop a severe burning sensation in her left hand and her left pinky finger was numb, and she also felt pain in her right hand. PA Locey referred for an EMG which was performed on March 3, 2010 by neurologist Dr. Thomasz Kosierkiewicz. Dr. Kosierkiewicz interpreted the study as positive for recurrent carpal tunnel syndrome bilaterally and also positive for cubital tunnel syndrome at the left elbow. (Px#7). On June 2, 2010, she sought medical treatment with Dr. Frank Lee at the Bonutti Clinic, who recommended surgery for bilateral carpal tunnel syndrome and cubital tunnel syndrome in her left elbow. (Px#7).

Respondent had Petitioner examined by Dr. Evan Crandall on June 30, 2010. Dr. Crandall felt that Petitioner's exam was negative for carpal tunnel syndrome on the right and positive only for an ulnar Tinel's sign on the left. He performed another EMG, which he reported was consistent only with previously treated carpal tunnel syndrome and no evidence of ulnar neuropathy at the elbow or wrist. He concluded that because the Petitioner had diabetes, thyroid disease, fibromyalgia, previous thoracic outlet syndrome surgery, and previous carpal tunnel syndrome, that she could not possibly benefit from an additional surgery. (Rx#2).

On July 23, 2010, Dr. Lee performed a left carpal tunnel re-release with external neurolysis and a left cubital tunnel release. On August 19, 2010, Dr. Lee performed a right re-current carpal tunnel re-release with external neurolysis. On November 12, 2010, Petitioner saw Dr. Lee again, and he noted that she had increased grip which was continuing to improve. She reported ongoing numbness in her left small finger and expressed concern that her grip was getting worse. Dr. Lee felt she had done well with her releases and had minimal numbness in her fingers and felt the weakness in her grip was very slight. (Px#7).

Petitioner obtained a separate examination with Orthopedist Dr. Corey Solman on June 12, 2013. Dr. Solman examined Petitioner and noted that her Tinel's signs over her left elbow and both wrists were negative with the exception of a mild Tinel's sign over the superficial radial nerve at the left wrist. He also noted no numbness or tingling to light touch in the left hand except for the fifth digit. (Px#9).

Dr. Solman concluded that Petitioner did develop carpal tunnel syndrome again in both hands as a result of her work related duties and also left cubital syndrome. He acknowledged that her work duties were not the only factors which led to the development of these conditions but opined that despite her diabetes that her work duties were an aggravating factor. He also opined that the residual numbness she had in her left small finger was related to chronic nerve damage from her cubital tunnel syndrome. (Px#9).

Petitioner testified that her right hand has improved following the surgery. At the present time, however, she testified that her pinky on her left hand feels dead, her other fingers go to sleep when she rubs them, and she still feels burning in her left hand. She drops things from her left hand that will just slide right out.

CONCLUSIONS OF LAW

1. With regard to the issues of whether the Petitioner sustained an injury which arose out of and in the course of her employment with Respondent and whether her current condition of ill-being is causally connected to this injury, the Arbitrator finds that the Petitioner has met her burden of proof. Petitioner worked as a parts inspector for Respondent for many years and there is no dispute that this job required frequent movement of her hands and frequent gripping with her hands. The bulk of her work day was spent inspecting parts by using either a thread gauge, a caliper, or a height gauge, and each tool required repetitive motions with her hands.

The thread gauge required rapid twisting of her hands while gripping the parts. The caliper required gripping and extension of the thumb and also bending of the wrist. The height gauge also required bending of her wrist to move her hand back and forth. Petitioner developed carpal tunnel syndrome in 1994 and had surgical releases bilaterally. Respondent's examining physician, Dr. Crandall, does not dispute that Petitioner's job required repetitive hand motions, but rather opined that Petitioner's symptoms were residual from her previous carpal tunnel syndrome. His conclusion, however, ignores the fact that Petitioner returned to her job following her surgical releases and worked at a job which required frequent gripping and repetitive hand motions for sixteen years before she again began to experience symptoms from carpal tunnel syndrome. The Arbitrator is persuaded by the opinion of Dr. Solman that Petitioner's job duties served to contribute to the development of the recurrence of her bilateral carpal tunnel syndrome and also to the development of her cubital tunnel syndrome in the left elbow. The Arbitrator therefore finds that Petitioner did sustain an accident which arose out of and in the course of her employment and that her current condition of ill-being with respect to her hands and left elbow are causally connected to this injury.

2. With regard to the issue of temporary total disability, the Arbitrator finds that Petitioner was temporarily totally disabled from July 23, 2010 through October 3, 2010, a period of 10-3/7 weeks. Petitioner underwent surgery on her left hand and elbow on July 23, 2010 and on her right hand on August 19, 2010. On September 21, 2010, Dr. Lee released her to return to work on October 4th. Respondent shall therefore pay to the Petitioner the sum of $435.79 per week for a period of 10-3/7 weeks, pursuant to Section 8(b) of the Act.

3. With regard to the issue of medical expense, the Arbitrator finds that the Petitioner's medical care was reasonable and necessary to relieve the effects of her injury. Petitioner submitted the bills from her medical treatment and these show that the following providers have unpaid balances in the following amounts:

1) Anesthesia Care of Effingham (DOS:7/23/10 & 8/19/10):	$2,160.00
2) Bonutti Orthopedic Clinic (DOS: 8/19/10):	$ 400.00
3) Marshall Clinic (DOS: 7/21/10):	$ 83.00
Total:	$2,643.00

The remaining medical expense was paid by Petitioner's group health insurance. The parties have stipulated that this group health insurance is covered by Section 8(j) of the Act. Respondent shall therefore pay to the Petitioner the sum of $ 2,643.00 for medical expense pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall also hold Petitioner harmless with respect to the payments made by the group health insurer.

4. With regards to the nature and extent of the disability, the Arbitrator finds that the Petitioner has sustained a loss of 15% of her right hand, 15% of her left hand, and 15% of her left elbow, pursuant to Sections 8(e)(9) and 8(e)(10) of the Act. Petitioner sustained recurrent bilateral carpal tunnel syndrome and cubital tunnel syndrome in her left elbow. She is right hand dominant. She testified that she has significant pain and numbness in her left hand, especially her 5th finger, and will occasionally drop things. Dr. Lee's records confirm that she has lost some strength in her left hand. Dr. Solman concluded that the ongoing numbness in her left 5th finger is a result of the cubital tunnel syndrome at her left elbow. Respondent shall receive a credit for the amount of weeks paid for her previous settlements. Petitioner had previously settled a claim for bilateral carpal tunnel syndrome with Respondent for 15% of the right hand and 10% of the left hand.

Respondent shall therefore pay to the Petitioner the sum of $392.21 per week for a period of 99.45 weeks, pursuant to Sections 8(e)(9) and 8(e)(10) of the Act, less the Respondent's credit for the prior settlement of 15% of the right hand (28.5 weeks of PPD) and 10% of the left hand (19 weeks of PPD), leaving the Petitioner 51.95 weeks of permanent partial disability benefits.

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Beverly Thomason (nka Beverly Clements),

Petitioner,

14IWCC0344

vs.

NO: 08 WC 08037

Airtex Products, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of temporary total disability, causal connection, medical expenses, permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 22, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

14IWCC0344

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $50,500.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAY 0 5 2014

David L. Gore

Stephen J. Mathis

Mario Basurto

DLG/gal
O: 4/24/14
45

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

THOMASON, BEVERLY (NKA CLEMENTS)
Employee/Petitioner

Case# **08WC008037**

10WC022752

11WC037713

AIRTEX PRODUCTS INC
Employer/Respondent

14IWCC0844

On 8/22/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0293 KATZ FRIEDMAN EAGLE ET AL
CHRISTOPHER MOSE
77 W WASHINGTON ST 20TH FL
CHICAGO, IL 60602

0180 EVANS & DIXON LLC
MARILYN C PHILLIPS ESQ
211N BROADWAY SUITE 2500
ST LOUIS, MO 63102

STATE OF ILLINOIS)
)SS.
COUNTY OF JEFFERSON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

14IWCC0344

BEVERLEY THOMASON (nka CLEMENTS)
Employee/Petitioner

v.

AIRTEX PRODUCTS, INC.
Employer/Respondent

Case # 08 WC 8037

Consolidated cases: 10WC22752/11WC37713

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on July 9, 2013. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other ___

FINDINGS

14IWCC0344

On December 18, 2007, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **$32,558.53**; the average weekly wage was **$656.42**.

On the date of accident, Petitioner was **64** years of age, married with **0** dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$8,032.39** for TTD, **$0** for TPD, **$0** for maintenance, and **$ 0** for other benefits, for a total credit of **$8,032.39**.

Respondent is entitled to a credit for amounts paid under Section 8(j) of the Act.

ORDER

- The respondent shall pay the petitioner temporary total disability benefits of $ 437.61/week for 22-6/7 weeks, from December 21, 2007 – January 7, 2008; February 21, 2008 – April 28, 2008; June 11, 2008 – June 26, 2008 and from February 11, 2009- April 9, 2009, which is the period of temporary total disability for which compensation is payable.
- The respondent shall pay Petitioner the sum of $393.85/week for a further period of 107.5 weeks, as provided in Section 8(e)(12) of the Act, because the injuries sustained caused 50% loss of the right leg.
- The respondent shall pay Petitioner the sum of $ 6,176.29 for medical expense.
- Respondent shall be given a credit of for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.
- The respondent shall have a credit for the amount paid for the short term disability by it's non-occupational disability carrier and its group health insurer, pursuant to Section 8(j) of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

8/21/13
Date

AUG 22 2013

14IWCC0344

FINDINGS OF FACT

Petitioner was employed by Respondent for 33 years as a parts inspector in the receiving department. On December 18, 2007 she was going in to work when she slipped on ice and slipped on ice and slid into a steel pole, striking her right knee on the pole. She described that she struck her knee hard and felt pain and burning in her knee.

Petitioner testified that before this injury, she had not received any medical attention for her right knee. She did not have any problems with respect to her right knee at the time of the injury. She did recall an incident which occurred where she struck her right knee while she was at work in January 2006. She recalled that she tripped on a bolt sticking out of the floor and fell to her knees, but this resolved without medical treatment.

She went to the emergency room on December 20, 2007 (Px#1) and later went to Crossroads Family Medicine, where she saw a physician's assistant, Ms. Sherry Locey, who referred her to an orthopedic specialist, Dr. Behrooz Heshmatpour. The records from PA Locey's office show that she restricted Petitioner to light duty on December 20, 2007 and on January 7, 2008 she released her to work without restrictions.(Px#2).

When Petitioner saw Dr. Heshmatpour, he recommended surgery, which was performed on February 21, 2008. (Px#3). According to Dr. Heshmatpour's operative report, he observed generalized chondromalacia of the patella, fairly advanced loss of cartilage and chondromalacia of the medial femoral condyle, significant loss of cartilage and chonromalacia of the lateral tibial plateau and lateral femoral condyle, and a complex tear of the lateral meniscus. He debrided the torn section of the meniscus, performed a chondroplasty of the lateral tibial plateau and lateral femoral condyle, and a lateral release of the patella. (Px#5).

Two weeks after her surgery, on March 6, 2008, Petitioner called Dr. Heshmatpour and expressed concern about swelling in her leg and foot with pain in her calf. The doctor recommended she go to an emergency room at St. Anthony's Hospital. (Px#2). At the emergency room, it was noted that she had pain and swelling in her leg, but a Doppler study was negative for blood clots. (Px#5). On March 31, 2008, Dr. Heshmatpour recommended that Petitioner could gradually go back to work with a cane. On April 28, 2008, she again saw Dr. Heshmatpour and reported residual pain though she was doing great. He noted that she would have residual pain and would eventually need a knee replacement but that she was doing well enough that she could go back to work, though she should not walk or stand for protracted periods of time and should interrupt standing or walking to sit down and rest. (Px#3).

Respondent had Petitioner examined by Dr. Christopher Kostman, of Orthopedic & Sports Medicine Clinic, on April 29, 2008. Dr. Kostman's reported that since Petitioner's injury she reported her right knee had catching, popping with no true locking, and also giving way. After her arthroscopy, she had improvement of popping and catching but no improvement of her pain or giving way symptoms. Dr. Kostman concluded that Petitioner sustained a lateral meniscus tear as a result of her injury on December 18, 2007 and that arthroscopy to repair meniscus was reasonable and necessary. He concluded, however, that her patellofemoral arthritis, lateral joint line arthritis and chondromalacia were unrelated to her injury, and the surgical procedure related to these conditions (chondroplasty of the lateral femoral condyle, tibial plateau, medial femoral condyle and lateral retinacular release) was also unrelated. (Rx#1).

On June 11, 2008, Petitioner phoned Dr. Heshmatpour's office and complained that she was still having a significant amount of swelling and pain in the calf and that her knee pain was unchanged and she was also having swelling in the knee. Dr. Heshmatpour told Petitioner to contact her family physician to make sure that

she hasn't developed a blood clot. (Px#3) Petitioner went to see her physicians' assistant, Sherry Locey who recommended she go to the emergency room and restricted her from working. (Px#2).

At the emergency room at St. Mary's Good Samaritan Hospital, a Doppler study did not detect any blood clots. An MRI of Petitioner's right leg showed a large amount of edema throughout her gastrocnemius muscle with two well-circumscribed fluid collections and also moderate edema within subcutaneous tissues. (Px#6). PA Locey continued to see Petitioner and restrict Petitioner from work through June 30th due to pain and swelling in her right leg. (Px#2).

Petitioner sought additional treatment from Dr. Peter Bonutti for her right knee on November 11, 2008. She testified that she did this because her knee continued to be in pain; after the first surgery by Dr. Heshmatpour the back part of her knee stopped hurting but the front part continued to be in pain.

The records of Dr. Bonutti show that he saw Petitioner on November 11, 2008 for pain in her right knee that has become progressively worse since February 2008. He noted that she had two traumas in the past, a direct blow to the patella in January 2006 when she fell on both knees and a direct blow to both knees in December 2007 when she fell on both knees, and that she also developed a blood clot following surgery performed by Dr. Heshmatpour. He recommended she undergo a total knee replacement. (Px#7).

At Respondent's request, Dr. Kostman performed a second exam which occurred on January 7, 2009. Dr. Kostman, concluded that none of Petitioner's medical treatment which occurred after his first exam on April 29, 2008 was related to her work injury, that she was at maximum medical improvement with respect to the injury and did not need any work restrictions. (Rx#1).

Dr. Bonutti performed surgery to provide her with a total knee replacement on February 11, 2009. On April 2, 2009, he recommended that she could return to work in one week without restrictions but she should limit repetitive squatting and lifting. (Px#7). Petitioner returned to work on April 10, 2009. Petitioner had a one year follow-up exam with Dr. Bonutti on February 16, 2010, where he stated that she had excellent results from the knee replacement. (Px#7).

Petitioner sought an evaluation from Orthopedist Dr. Corey Solman on June 12, 2013. Dr. Solman. Dr. Solman noted that Petitioner reported that after she injured her right knee on December 18, 2007 that she experienced pain, catching, and popping in the knee. His exam revealed a range of motion in her right knee of 0 to 125 degrees, no signs of instability, good strength, and mild tenderness over the anteromedial and anterolateral joint lines and retropatellar tendon area. He opined that Petitioner had pre-existing osteoarthritis changes and chondromalacia in the right knee but she her injury could have caused or advanced the changes in chondromalacia which accelerated the osteoarthritis which led to the need for a total knee replacement. He further explained that Petitioner's pains in the retropatellar tendon area are common for people who undergo total knee replacements, and can be the result of a buildup of scar tissue around the patellofemoral joint and the retropatellar fat pad which causes tightness and some popping and some catching. (Px#9).

At the present time, Petitioner testified that she experiences pain in the front of her right knee when going up and down stairs, and therefore goes one step at a time. She also experiences a similar pain when she squats or kneels to pray, and can only kneel for about five minutes before she has to stand. She can walk without pain on a level surface, but testified that after twenty minutes she starts to feel some weakness in her knee and must stop.

CONCLUSIONS OF LAW

1. With regard to the issue of whether Petitioner's current complaints are causally connected to her injury, the Arbitrator finds the Petitioner sustained her burden of proof. There is no dispute that Petitioner sustained an accident which arose out of and in the course of her employment when she slipped on ice and struck a steel pole with her right knee, or that the surgery performed by Dr. Heshmatpour to repair the lateral meniscus tear was caused by this injury. The facts demonstrate that Petitioner was in a condition of good health prior to her injury and did not have any pain or other symptoms related to her right knee. After the injury, however, she consistently had pain in her knee which was not relieved by her surgery by Dr. Heshmatpout. The Arbitrator is persuaded by the opinion of Dr. Kostman that Petitioner's pre-existing condition of chondromalacia and osteoarthritis in her right knee was aggravated by her injury when she struck her right knee on a steel pole. The aggravation of this condition led to the need for her total knee replacement.

2. With regard to the issue of Temporary Total Disability, the Arbitrator finds that the Petitioner was temporarily and totally disabled from December 21, 2007 through January 7, 2008, and again from February 21, 2008 through April 28, 2008, and again from June 11, 2008 through June 26, 2008, and again from February 11, 2009 through April 9, 2009, a combined period of 22-6/7 weeks. Petitioner was restricted to light duty by PA Locey on December 20, 2007 and released to return to work on January 8, 2008. Thereafter, she underwent surgery on February 21, 2008 and was released to return to work full duty – with limits on her walking and standing – on April 28, 2008. She was again restricted from work on June 11, 2008 through June 30, 2008, by PA Locey while she was experiencing pain and swelling in her right leg, though by the parties' stipulation Petitioner actually returned to work on June 27, 2008. Petitioner was restricted from working again by Dr. Bonutti after her total knee replacement on February 11, 2009 and later returned to work on April 10, 2009. Accordingly, Respondent shall pay to the Petitioner the sum of $437.62 per week for a period of 22-6/7 weeks.

3. With regard to the issue of medical expenses, the Arbitrator finds that the Petitioner's medical treatment was reasonable and necessary to relieve the effects of her work injury. In addition, the Arbitrator also concludes that Petitioner's medical treatment in March and June 2008 for pain and swelling in her right leg is causally related to her injury. On March 6th and again on June 11th, Petitioner developed pain and swelling in her leg, sought medical treatment, and was directed to go to the emergency room to be evaluated for blood clots. Though no blood clots were ever confirmed, the condition was felt to be related to her prior surgery and the treatment was ordered to evaluate her for post-operative clotting. Petitioner submitted the bills for her medical treatment and these reveal that the following providers have unpaid balances for the treatment of her right knee in the following amounts:

1)	Amsol Anesthesia (DOS: 2/11/09):	$ 700.00
2)	Anesthesia Care of Effingham (DOS: 2/11/09)	$ 2,590.00
3)	Bonutti Orthopedic Clinic (DOS: 2/11/09):	$ 727.00
4)	Fairfield Memorial Hospital (DOS: 2/18-3/27/09):	$ 266.56
5)	Marshall Clinic (DOS: 2/4/09 – 3/9/09):	$ 210.00
6)	St. Anthony's Memorial Hosp. (DOS: 3/6/08):	$ 239.00
7)	St. Anthony's Memorial Hosp. (DOS: 2/4 – 2/11/09):	$ 467.21
8)	St. Mary's Good Samaritan Hosp (DOS: 6/11/08 & 8/4/08:	$ 976.52

These bills total $6,176.29. The remaining medical expense was paid by Petitioner's group health insurance. The parties have stipulated that this group health insurance is covered by Section 8(j) of the Act. Respondent shall therefore pay to the Petitioner the sum of $6,176.29 for medical expense pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall also hold Petitioner harmless with respect to the payments made by the group health insurer.

4. With regards to the nature and extent of the disability, the Arbitrator finds that Petitioner has sustained an injury which has resulted in a loss of 50% of her right leg, pursuant to Section 8(e)(12) of the Act. Petitioner sustained an injury to her right knee which resulted in a tear of her lateral meniscus which was repaired by arthroscopic surgery and which also aggravated her pre-existing osteoarthritis and led to a total knee replacement. Respondent shall therefore pay to the Petitioner the sum of $393.85 per week for a period of 107.5 weeks, as provided in Section 8(e)(12) of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Beverly Thomason (nka Beverly Clements),

Petitioner,

14IWCC0345

vs.

NO: 11 WC 37713

Airtex Products, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, causal connection, medical expenses, permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 22, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

14IWCC0345

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $28,400.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAY 0 5 2014

DLG/gal
O: 4/24/14
45

David L. Gore

Stephen Mathis

Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

THOMASON, BEVERLY (NKA CLEMENTS)
Employee/Petitioner

Case# **11WC037713**

10WC022752

08WC008037

AIRTEX PRODUCTS INC
Employer/Respondent

14IWCC0345

On 8/22/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0293 KATZ FRIEDMAN EAGLE ET AL
CHRISTOPHER MOSE
77 W WASHINGTON ST 20TH FL
CHICAGO, IL 60602

0180 EVANS & DIXON LLC
MARILYN C PHILLIPS ESQ
211 N BROADWAY SUITE 2500
ST LOUIS, MO 63102

STATE OF ILLINOIS)
)SS.
COUNTY OF JEFFERSON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

14IWCC0345

BEVERLY THOMASON (nka CLEMENTS)
Employee/Petitioner

v.

AIRTEX PRODUCTS, INC.
Employer/Respondent

Case # 11 WC 37713

Consolidated cases: 08WC8037&10WC22752

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on July 9, 2013. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other ___

FINDINGS 14IWCC0345

On July 27, 2011, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **$34,180.12**; the average weekly wage was **$657.31**.

On the date of accident, Petitioner was **67** years of age, married with **0** dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$0** for TTD, **$0** for TPD, **$0** for maintenance, and **$ 0** for other benefits, for a total credit of **$0**.

Respondent is entitled to a credit for amounts paid under Section 8(j) of the Act.

ORDER

- The respondent shall pay the petitioner temporary total disability benefits of $ 438.21/week for 17 weeks, from August 8, 2011 through November 21, 2011 and again from November 29, 2011 through December 11, 2011, which is the period of temporary total disability for which compensation is payable.
- The respondent shall pay Petitioner the sum of $394.39/week for a further period of 50 weeks, as provided in Sections 8(d)(2) of the Act, because the injuries sustained 10% loss of a person as a whole.
- The respondent shall pay Petitioner the sum of $1,262.80 for medical expense.
- The respondent shall have a credit for the amount paid for the short term disability by it's non-occupational disability carrier and its group health insurer, pursuant to Section 8(j) of the Act.
- The respondent shall further hold Petitioner harmless with respect to payments made by BlueCross BlueShield to Petitioner's medical providers for treatment related to her accidental injury and with respect to payments made by its non-occupational disability carrier pursuant to Section (j) of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

8/21/13
Date

AUG 22 2013

14IWCC0345

FINDINGS OF FACT

Petitioner was employed by Respondent for 33 years as a parts inspector in the receiving department. As a parts inspector, she would start by getting a box of parts which had been delivered, open it up, take the parts out and take them back to her desk. Petitioner's job was to check 32 parts in each delivery and she did this for the bulk of her day. Petitioner recalled that in approximately 2000 she underwent surgery on her right shoulder to repair a torn rotator cuff. She testified that this surgery resolved her complaints in her right shoulder. In the early part of 2011, however, she began to experience pain in her right shoulder that went down her right arm.

Petitioner sought medical treatment from Dr. Frank Lee of the Bonutti Clinic on March 8, 2011 because of pain in her right shoulder radiating down her arm for several months. The records of the Bonutti Clinic show that Petitioner sought treatment there on March 08, 2011 for right shoulder pain which had been radiating down her arm for four months and was worse with usage. She had previously undergone a rotator cuff repair several years prior in 2000 and had done well following that, but was not having pain. Dr. Lee provided her with a cortisone injection into her right shoulder, which provided partial relief. Dr. Lee ordered an MRI and arthrogram and this was performed on March 30, 2011. It showed through and through tears of both the supraspinatus and infraspinatus tendons. (Px#7).

On April 27, 2011, Petitioner again saw Dr. Lee. He provided a second injection for what he termed a chronic tear of the rotator cuff and felt that she may need surgery if the injection failed to help her pain. Petitioner testified that the first one helped for a little while but the second injection only helped until she got home. She testified that she was experiencing burning pain in her right shoulder and she could feel her heart beating in her whole arm. She was able to work, however, though her arm was hurting.

On June 6, 2011, Petitioner again saw Dr. Lee for her right shoulder. She expressed her desire to avoid surgery if possible, and the doctor provided her with another injection into her shoulder and told her to schedule another appointment once she determined how the injection did. (Px#7).

Petitioner testified that on July 27, 2011, she was using a pallet jack to move skids that contained boxes of parts. She was trying to get to a particular box of parts that was in the middle of a group of skids. She was pulling one skid out but it caught onto another skid, and she jerked it to try to free it when her shoulder popped and began to hurt worse. After this incident, Petitioner testified that she left the pallet just like it was so she could show her foreman. She recalled that after she got home from work that afternoon, she Dr. Lee for an appointment and went to see him the next day.

The records from the Bonutti Clinic show that at 10:26 a.m. on July 27, 2011, Petitioner phoned the clinic and stated that she is now having a lot of pain and redness in the shoulder and wanted to know what she should do. They further show that a nurse informed Dr. Lee at 3:06 p.m. that she wanted to schedule an appointment for Petitioner to see him the next day. Dr. Lee responded in the affirmative at 5:12 p.m. (Px#7).

When Petitioner saw Dr. Lee on July 28, 2011, she reported that she was doing well until yesterday when she injured her right shoulder at work trying to move a skid that was stuck; she pulled on the skid that was caught on another skid. Dr. Lee gave her a prescription for Tylenol and Ultram because of the recent flare up and restricted her from working through August 2, 2011. He asked Petitioner to call the next week and advise him whether her shoulder was better or not, and if not he would schedule surgery to repair her rotator cuff. Petitioner phoned on August 1st and informed Dr. Lee that her shoulder had not improved. He recommended surgery and this was performed on August 12, 2011. (Px#7).

In the operative report, Dr. Lee stated that he performed a subacromial decompression, a distal clavicle excision, a mini-open repair of a large rotator cuff tear, and removal of a loose bony body. He noted that a portion of the rotator cuff fibers were attached to the loose bone fragment and it was difficult to tell whether this represented a chronic or acute phenomenon. (Px#7).

Prior to this surgery, Respondent had Petitioner evaluated by Dr. Peter Mirkin of Tesson Ferry Spine & Orthopedic Center on August 8, 2011. Dr. Mirkin reviewed the records which reflected that Petitioner underwent an open rotator cuff repair with an acromioplasty and excision of the distal clavicle on August 8, 2000, and the records of Dr. Heshmatpour which reflected that Petitioner complained of weakness in her right shoulder on December 11, 2000 and reports that she was doing well though with some discomfort at an unspecified date in "early 2001." Dr. Mirkin concluded that Petitioner had degenerative shoulder pain from a strain injury. He felt her examination was benign but reserved further comment until he could review the results of a recent MRI. (Rx#3).

Petitioner returned to work on November 22, 2011 just before Thanksgiving. Petitioner testified that she had difficulty performing her job, however, because lifting boxes of parts caused her right arm to hurt. She estimated that the boxes of parts she would inspect weighed between 10 to 15 pounds. She stopped working because of the difficulty she had, and she returned to work on November 29, 2011 working at a different job performing gauge inspection. She testified that some of the gauges were heavy and also she had to set up the work table and that doing this hurt, so she decided to retire, which she did on December 19, 2011.

Petitioner obtained an examination from Orthopedist Dr. Cory Solman on June 12, 2013. His examination of her right shoulder revealed reduced range of motion in abduction (90 degrees) and external rotation (45 degrees), and strength was measured at 4/5 for her external rotators and her supraspinatus. He felt this was good functional range of motion and good functional strength, and since she has retired she does not need to build up her strength to her pre-injury level. The exam of the left shoulder was normal. He concluded that will continue to have pain in her right shoulder which she should treat by icing it, taking anti-inflammatories, avoiding inciting activities, and engaging in strengthening exercises, though she may need an occasional cortisone injection (Px#9). He felt that with her chronic repetitive work she developed a re-tear of her rotator cuff, and also felt that she re-injured the shoulder when she pulled on the skid which could have produced an acute on chronic injury. (Px#9).

Petitioner testified that at the present time she gets throbbing pain at the top of her right shoulder if she is active with her right arm, such as when she uses a vacuum cleaner. Trying to comb her hair is difficult because she will drop the comb. She does not curl her hair herself because she will drop a curling iron; her granddaughter sometimes will curl it for her. She did not describe any other activities which produced pain, though she said she is no longer active since she retired. She takes Motrin every morning because of pain in her right shoulder and Aleve sometimes in the evening for her right shoulder. When the weather is rainy she will notice an achiness at the top of her right shoulder.

Respondent produced its Workers' Compensation Manager, Mr. Jeff Jake, to testify on its behalf. He testified that he recalled speaking with Petitioner at approximately 11:45 a.m., just prior to his lunch hour, on July 27, 2011. According to his testimony, he went to the receiving area to pick up flu shots which had arrived when Petitioner called him over. He stated that Petitioner told him that she wanted to let him know that she had a doctor's appointment scheduled for the next day for her shoulder and that it was Work Comp. According to him, he asked her what injury this was related to and she informed him that it was from when she had her surgery nine years ago. He replied that it would probably be too long ago for her to continue to treat for it and

he would check to see if she received a settlement for it. He claimed that he contacted her after lunch to notify her that her prior claim for her right shoulder was a closed claim and that she could not treat for it, but offered to provide her with family/medical leave paperwork. According to him, she came to his office later that day to obtain this paperwork. Per his testimony, she reported an injury to her foreman when she returned to work on August 2nd, alleging that she injured her shoulder while pulling a pallet jack. Mr. Jake acknowledged that he did not go to investigate the scene after Ms. Clements alleged that she injured her shoulder pulling a pallet jack and did not observe a pallet stuck on another pallet, nor did he ever discuss the alleged accident with Petitioner's foreman or her co-workers. He is not responsible for the investigation of work accidents, as that is handled by a different person, Rod Holman.

On Rebuttal, Petitioner denied that she spoke with Mr. Jake before she sustained an injury to her right shoulder while pulling a pallet jack on July 27, 2011. She testified that after this occurred he came into the receiving area and she showed him how she hurt her shoulder, and she left the skids where they were after she hurt her shoulder trying to separate them. According to her, he told her that she could not file another claim because she had previously settled a claim for her right shoulder and so she walked away from him. She further testified that later in the day she showed Airtex' investigator Ron Holman and her foreman Mike White how her accident occurred. She recalled that she called Dr. Lee's office later in the day after she got off of work.

CONCLUSIONS OF LAW

1. With regard to the issue of whether Petitioner sustained an accident which arose out of and in the course of her employment, the Arbitrator finds the Petitioner has met her burden of proof. The medical records from Dr. Lee's office corroborate Petitioner's testimony that she injured her right shoulder while working on July 27, 2011 which aggravated her condition. Petitioner testified that while she had ongoing pain in her right shoulder before this date, it became aggravated when she pulled on a skid which had caught on another skid. The records from Dr. Lee's office prior to that date show that Petitioner complained of pain in her right shoulder but that she did not want to have surgery. Dr. Lee consistently offered her the option of surgery to repair a rotator cuff tear if he could not control her pain with injections before this event; and Petitioner consistently demurred.

The testimony of Respondent's workers' compensation manager, Jeff Jake, is not persuasive because it does not fully explain the events of the day of the alleged accident. He claimed that Petitioner spoke with him on July 27, 2011 at 11:45 a.m. to inform him that she wanted to re-open an old claim for an injury to her right shoulder and did not mention an accident, and he did not receive notice of any claim of an accident until several days later. He further acknowledged that he is not responsible for the investigation of alleged work injuries, but rather this is the responsibility of Ron Holman. He did not offer any explanation as to why Ron Holman would have reviewed the scene with Petitioner later in the afternoon of July 27th, as Petitioner testified, if she did not report an accident until several days later. Respondent failed to produce either Ron Holman, Petitioner's foreman Mike White, or any other witnesses who could have addressed Petitioner's allegations that she sustained an accident on that date. Petitioner testified that after she sustained the accident she left the skid she had been pulling where it was and showed both Ron Holman and Mike White how her injury had occurred, yet Respondent did not present either of these gentlemen to testify on its behalf.

Petitioner testified that she did not call Dr. Lee's office for an appointment until after she got home from work that afternoon. The records from Dr. Lee's office show that she phoned for her appointment at approximately 10:26 that morning, however, and informed the nurse that she was having more problems with her shoulder that had begun that day. While Mr. Jake testified that Petitioner informed him at approximately 11:45 that morning that she already had an appointment with the doctor the next day, the records from the Bonutti Clinic show that

the appointment was not made until after 3:00 p.m. at the earliest. The records from the Bonutti Clinic are more consistent with the Petitioner's testimony than they are of Mr. Jake's. While the nurse's note regarding Petitioner's phone call at 10:26 that morning do not record that she had an injury that morning, there is no indication that the nurse was taking a full history from the patient and would have asked about or even recorded any mention of a new injury. Petitioner did provide a full history and did claim that she sustained an injury while pulling on a skid when she saw Dr. Lee the next day. The nurse's notes, however, do contradict Mr. Jake's claim that Petitioner told him that she had already made an appointment to see Dr. Lee.
For the reasons set forth above, the Arbitrator finds that Petitioner did sustain an accident which arose out of and in the course of her employment with Respondent on July 27, 2011.

2. The Arbitrator finds that Petitioner's current condition of ill-being is causally connected to her injury which occurred on July 27, 2011. Having found that Petitioner sustained an accident on July 27, 2011, the treatment following this accident, including her surgery two weeks later, is causally related to this accident. The medical records from Dr. Lee's office indicate that Petitioner's symptoms increased following her accident and she could no longer tolerate the pain. Whereas before she was trying to avoid surgery, after the accident she felt that she needed to undergo surgery. The Arbitrator is persuaded by the opinion of Dr. Solman that Petitioner's injury was an acute event, which aggravated her chronic condition, caused it to worsen, and required surgery.

3. With regard to the issue of Temporary Total Disability, the Arbitrator finds that Petitioner was temporarily totally disabled from August 8, 2011 through November 21, 2011 and again from November 29, 2011 through December 11, 2011, a period of 17 weeks. Dr. Lee restricted Petitioner from working on July 28, 2011 and did not release her to return to work until November 22, 2011. Petitioner testified that she attempted to perform her job but this caused increased pain and she was again off of work from November 29, 2011 through December 11, 2011, and returned to work on December 12, 2011 and retired a few days later. At Arbitration, Petitioner stipulated to a period of TTD which commenced on August 8, 2011. Respondent shall therefore pay to the Petitioner the sum of $438.21 per week for a period of 17 weeks, pursuant to Section 8(b) of the Act.

4. With regard to the issue of medical expenses, the Arbitrator finds that the Petitioner's medical treatment was reasonable and necessary to relieve the effects of her work injury. Petitioner submitted the bills for her medical treatment and these reveal that the following providers have unpaid balances for the treatment of her right knee in the following amounts:

1) Bonutti Orthopedic Clinic (DOS: 3/08/11-12/08/11):	$ 594.00
2) Marshall Clinic (DOS: 8/09/11):	$ 214.00
3) St. Anthony's Memorial Hosp. (DOS: 8/12/11):	$ 454.80

These bills total $1,262.80. The remaining medical expense was paid by Petitioner's group health insurance. The parties have stipulated that this group health insurance is covered by Section 8(j) of the Act. Respondent shall therefore pay to the Petitioner the sum of $1,262.80 for medical expense pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall also hold Petitioner harmless with respect to the payments made by the group health insurer.

5. With regards to the nature and extent of the disability, the Arbitrator finds that Petitioner has sustained an injury which has resulted in a loss of 10% of a person as a whole, pursuant to Section 8(d)(2) of the Act.

Petitioner sustained an injury to her right shoulder, which resulted in a recurrent tear of her rotator cuff which was repaired by a mini-open surgery. She has loss of strength and range of motion and residual pain. Because of her ongoing symptomology, she felt she could not continue to work at her normal job and chose to retire. Respondent shall therefore pay to the Petitioner the sum of $394.39 per week for a period of 50 weeks, as provided in Section 8(d)(2) of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Ruthelma C. Attig,

Petitioner,

14IWCC0346

vs. NO: 11 WC 36447

Murphysboro Unit District 186,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical expenses, permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 10, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

14IWCC0346

No bond is required for removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAY 0 5 2014

David L. Gore

Stephen Mathis

Mario Basurto

DLG/gal
O: 4/24/14
45

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

ATTIG, RUTHELMA C
Employee/Petitioner

Case# **11WC036447**

14IWCC0346

MURPHYSBORO UNIT DISTRICT 186
Employer/Respondent

On 9/10/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.03% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0250 HOWERTON DORRIS & STONE
STEVE STONE
300 W MAIN ST
MARION, IL 62959

1337 KNELL & KELLY LLC
MATT BREWER
504 FAYETTE ST
PEORIA, IL 61603

STATE OF ILLINOIS)
)SS.
COUNTY OF WILLIAMSON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

14IWCC0346

RUTHELMA C. ATTIG
Employee/Petitioner

v.

MURPHYSBORO UNIT DISTRICT 186
Employer/Respondent

Case # **11** WC **36447**

Consolidated cases: _____

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Herrin**, on **08/16/13**. By stipulation, the parties agree:

On the date of accident, **12/06/10**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned $**22,309.56**, and the average weekly wage was $**429.03**.

At the time of injury, Petitioner was **65** years of age, ***married*** with **0** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner the sum of **$257.41**/week for a further period of **37.5** weeks, as provided in Section **8(d)(2)** of the Act, because the injuries sustained caused **7.5% loss of use of the person as a whole**.

Respondent shall pay reasonable and necessary medical services of $39,107.36, subject to the fee schedule and as provided in Sections 8(a) and 8.2 of the Act, with Respondent receiving credit for any bills which Respondent has already paid.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

9/9/13
Date

SEP 10 2013

FINDINGS OF FACT

Petitioner works for Respondent as a teacher's aide. She has worked for the Respondent for 26 years since 1987. There is no dispute that on December 6, 2010, the Petitioner was working for the Respondent when a student collided with her in the school hallway. This incident caused the Petitioner to experience pain in her neck and lower back. Petitioner had previously sustained a neck injury for which she was still receiving medical treatment. This claim is focused on Petitioner's injury to her lower back.

On the day of the accident, following the incident described above, the Petitioner sought treatment at the emergency room of Memorial Hospital. The records from that medical provider confirms Petitioner's complaints of pain to her neck and low back. They indicate Petitioner was directed to follow up with her neurosurgeon.

On January 27, 2011, Petitioner underwent an MRI at the recommendation of her treating physician, Dr. Taveau. The MRI revealed disc degeneration and facet arthropathy with possible impingement and radiculopathy at L5-S1, L4-5 and L3-4.

Petitioner ultimately came under the care of neurosurgeon, Dr. Gerson Criste. Dr. Criste diagnosed Petitioner with lumbosacral spondylosis without myelopathy. Dr. Criste treated Petitioner initially with a series of epidural steroid injections. Dr. Criste followed up the injections with radiofrequency denervation. Petitioner testified that this treatment gave her relief after having undergone the procedure twice.

Dr. Frank Petkovich testified on behalf of the Respondent via evidence deposition on Ju;y 1, 2013. He conducted a review of the Petitioner's medical records but did not actually examine the Petitioner in person. Dr. Petkovich opined that based on his review of the medical records, the Petitioner sustained a soft tissue injury with a temporary exacerbation of a degenerative lumbar disk disease.

Petitioner did not lose any time from work due to this incident. She testified that she has physical limitations with bending, bathing, using stairs, painting her nails or standing for long periods of time. Her testimony during cross examination and the medical records offered by Respondent confirm that the Petitioner had complaints of low back problems in the past.

CONCLUSIONS OF LAW

1. The Arbitrator finds that the Petitioner has met her burden of proof regarding whether her current condition of ill-being is causally connected to her undisputed work accident on December 6, 2010. This finding is supported by the Petitioner's uncontroverted testimony and the treating medical records. The Arbitrator finds persuasive the MRI and operative reports indicating Petitioner's diagnosis of lumbosacral spondylosis without myelopathy.

2. Petitioner's medical treatment for her lower back condition was reasonable and necessary to address her condition. The Arbitrator notes the Petitioner's credible testimony about her treatment, including her injections and her radiofrequency denervation procedures – all of which appears to have helped in minimizing her back complaints. Accordingly, Respondent shall pay any and all medical expenses incurred by Petitioner in relation to her back treatment as evidenced in the blue tabbed section of Petitioner's Exhibit number 1, subject to the fee

schedule and in accordance with Sections 8(a) and 8.2 of the Act. Respondent shall receive a credit for any expenses it has already paid.

3. Petitioner has sustained a 7.5% loss of use of the person as a whole as the result of this accident. This finding is based on: the medical evidence indicating Petitioner's diagnosis of lumbosacral spondylosis without myelopathy; Petitioner's medical treatment, which included injections and two procedures of radiofrequency denervation; and Petitioner's continued physical complaints, which were both credible and unrebutted.

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Karen Ramey,

Petitioner,

14IWCC0347

vs. NO: 11 WC 07818

State of Illinois, Department of Human Services,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of accident and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 6, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

DATED: MAY 0 5 2014

David L. Gore

Stephen J. Mathis

Mario Basurto

DLG/gal
O: 4/24/14
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ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

RAMEY, KAREN
Employee/Petitioner

Case# **11WC007818**

ST OF IL DEPT OF HUMAN SERVICES
Employer/Respondent

14IWCC0347

On 9/6/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.05% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1824 STRONG LAW OFFICES
HANIA SOHOUL
3100 N KNOXVILLE AVE
PEORIA, IL 61603

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PKWY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

4993 ASSISTANT ATTORNEY GENERAL
ANDREW SUTHARD
500 S SECOND ST
SPRINGFIELD, IL 62706

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST
13TH FLOOR
CHICAGO, IL 60601-3227

1745 DEPT OF HUMAN SERVICES
BUREAU OF RISK MANAGEMENT
PO BOX 19208
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

SEP 6 2013

KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION 14IWCC0347

Karen Ramey
Employee/Petitioner

v.

State of Illinois Department of Human Services
Employer/Respondent

Case # **11** WC **007818**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Springfield**, on **July 10, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

14IWCC0347

FINDINGS

On **August 19, 2010**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **$83,304.00**; the average weekly wage was **$1602.00**.

On the date of accident, Petitioner was **55** years of age, ***married*** with **0** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits at the maximum PPD rate of **$669.64/week** for **12.65** weeks, because the injuries sustained caused the **5%** loss of use of left arm, as provided in Section 8(e) of the Act.

Respondent shall pay reasonable and necessary medical expenses of **$2,065.00** subject to the Medical Fee Schedule as provided in Sections 8(a) and 8.2 of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator — 9.3.13 Date

SEP 6 - 2013

The disputed issues are accident, notice, causal connection, medical expenses and nature and extent. Petitioner was the only witness testifying at arbitration. She alleges an injury to her left elbow stemming from an accident on August 19, 2010.

The Arbitrator finds as follows:

Petitioner testified she is employed by Respondent as a supervisor in Social Security Disability Claims – Unit 7. Petitioner testified she has been employed with the State of Illinois since 1977. Her job duties, currently, and at the time of her accident, consist of supervising a unit of disability adjudicators.

Petitioner presented to the office of Dr. Widicus on October 18, 2010 complaining of left elbow pain after hitting it on a file cabinet at work two and a half months earlier. Petitioner told the doctor she thought it would get better but it was getting worse instead. Petitioner complained of radiating pain down her forearm and a feeling of increasing weakness. Dr. Widicus noted Petitioner was right hand dominant. Petitioner was referred to Dr. Watson. (RX 2)

Petitioner reported her injury to Respondent on October 19, 2010. According to the Employer's First Report of Injury Petitioner injured herself on August 19, 2010 when she was walking and turned a corner striking her left elbow on the corner of a cubicle. (RX 1) In her own Notice of Injury Petitioner stated she hit her left elbow on a cubicle corner while walking through the unit. She immediately experienced excruciating pain and her arm had remained painful and weak since then. (RX 1)

Petitioner presented to Dr. Watson at Watson Orthopaedics on October 20, 2010. As part of the visit Petitioner completed an Injury Report Form. In it Petitioner explained that she was walking within her unit and when she turned she hit her elbow on the corner of a cubicle resulting in excruciating pain. Petitioner further stated her elbow hurt for over two weeks and then began to get better. However, it continued to hurt when doing certain things and her arm felt like it was getting weaker. (PX 3)

According to the history noted in Dr. Watson's records, Petitioner injured her left elbow several weeks earlier at work when she struck the lateral aspect of her elbow against a cubicle wall. Petitioner described ongoing and persistent pain which was worse with lifting and power gripping. The pain also radiated into the dorsal aspect of her forearm and proximally into the arm. On physical examination Petitioner was tender about the lateral epicondyle. X-rays revealed no bony abnormalities. Petitioner was diagnosed with lateral epicondylitis and given an injection into her elbow. Petitioner was advised to return if necessary. (PX 3)

By letter dated December 10, 2010 Respondent notified Petitioner that her claim for workers' compensation benefits had been denied as 'there were no unsafe issues contributing to her elbow condition and the cause of her symptoms appeared to be idiopathic or unknown.' (PX 3)

Petitioner returned to see Dr. Watson on January 5, 2011 reporting some improvement in her left elbow but complaining of ongoing radiating pain into the lateral triceps area with ongoing tenderness about the

lateral epicondyle. She also experienced some de-pigmentation and fat atrophy from the cortisone injection. Dr. Watson recommended physical therapy and a return visit in three weeks. (PX 3)

Dr. Watson re-examined Petitioner on February 7, 2011 noting persistent left arm pain primarily along the distal lateral triceps and brachial radialis. Petitioner reported ongoing pain since her accident. While her lateral epicondylar pain had primarily resolved after two injections Petitioner noted ongoing pain with elevation of her shoulder and elbow in a flexed and pronated position. Dr. Watson was able to reproduce the symptoms in the office. Dr. Watson suspected some scar tissue or a contusion. He gave her another injection and recommended another visit in three weeks. (PX 3)

When Petitioner returned to see Dr. Watson on March 1, 2011 she reported no change in her symptoms and her physical examination was unchanged. Dr. Watson ordered an MRI scan. (PX 3)

Petitioner met with Dr. Watson on May 2, 2011 at which time her complaints and examination remained unchanged since her previous visit. Dr. Watson noted the MRI had not been authorized by workers' compensation so Petitioner was going to try and get it scheduled through her personal insurance. In the meantime, Petitioner was advised she could continue working. (PX 2)

Petitioner underwent the MRI on May 10, 2011. According to the report, soft tissue T2 signal abnormality involving the origin of the common extensor tendon and adjacent soft tissues was noted. The findings were consistent with tendinitis/partial tear of the origin of the common extensor tendon. The radial collateral ligament was not optimally visualized on the MRI and if there was any concern about an injury to that ligament an MRI arthrogram was recommended. (PX 2)

After the arthrogram Petitioner followed up with Dr. Watson on May 17, 2011 who noted the scan was indicative of a partial thickness tear with tendinitis of the common extensor tendon. Reluctant to recommend surgery, Dr. Watson recommended a second opinion with Dr. Christopher Maender. (PX 2)

Dr. Maender examined Petitioner on June 22, 2011. At that time he believed Petitioner's problem was two-fold: lateral epicondylitis and a radial nerve contusion. Dr. Maender recommended a trial of Mobic, a counterforce brace, and exercises. He wished to see her again in six weeks. (PX 2)

Petitioner returned to see Dr. Maender on August 3, 2011. Petitioner reported improvement after the last visit for approximately three weeks and then she returned to baseline. Petitioner described a lot of pain over the area about one handbreadth above her lateral epicondyle and pain with getting her hand behind her head and engaging in overhead activities. On physical examination Petitioner experienced pain with forward flexion up above ninety degrees. She had positive Neer and Hawkins impingement signs with good strength to her rotator cuff in all positions but pain when stressing them. She was most exquisitely tender right above the lateral epicondyle in the area previously described. Dr. Maender's diagnoses were impingement syndrome and parascapular shoulder pain and left radial nerve pain from direct compression that has not improved. Dr. Maender had no recommendations for the radial nerve, including surgical solutions. He recommended she continue using the anti-inflammatory and protect it; however, Petitioner expressed no interest in trying the brace. Dr. Maender believed Petitioner's shoulder complaints were due to compensation and he recommended some therapy. (PX 2)

Petitioner was again examined by Dr. Maender on September 13, 2011. Petitioner reported that some of the physical therapy exercises exacerbated her pain and were, therefore, stopped. Petitioner was still

experiencing pain in the radial nerve area along with a new complaint of burning. Dr. Maender gave Petitioner a second injection as he believed most of her pain was coming from extensor musculature. (PX 2)

Petitioner completed her physical therapy on September 22, 2011 (PX 2) and returned to see Dr. Maender on October 12, 2011. He noted improvement in her condition and recommended that she continue with conservative measures and avoid aggravating activities. If she had an acute exacerbation, he recommended she use the wrist brace. (PX 2)

Dr. Maender last examined Petitioner on December 7, 2011 at which time Petitioner reported ongoing pain along her left lateral epicondylar region. The doctor noted Petitioner had done a lot of work on Thanksgiving and the area was really painful and swollen thereafter. She reported diminished strength and pain when driving, along with occasional burning. On physical exam, Petitioner was tender directly over the lateral epicondyle and proximal to it. He did not really notice tenderness over the radial nerve. His diagnosis remained left lateral epicondylitis which he described as "persistent." He also noted some radial nerve irritation but it did not seem to be contributing to her pain that day. He again recommended exercises and avoidance of aggravating activities. She was told this could recur off and on for many years and that she needed to work on her strengthening exercises. If it ever gets bad enough, they can discuss available options at that time. (PX 2)

Petitioner has had no further medical care since December 7, 2011.

At arbitration Petitioner testified that she is 58 years old with three adult children. Petitioner graduated from college and has been employed by Respondent as a public service administrator supervisor. In that position Petitioner supervises adjudicators who decide social security disability claims. According to Petitioner, it is a very stressful job.

Petitioner testified that she was working late on the evening of August 19, 2010. While she normally worked until 4:30 there were three times each month when she was required to work until 6:00 p.m. Petitioner would receive "comp time" for working the additional hours. Petitioner testified she was walking into a co-worker's cubicle to put some papers in an adjudicator's tray when she turned and hit her left elbow. She stated around 5:30 p.m. she walked into a cubicle within Unit 7 to put "a piece of paper" in the employee's in-box. After she put the paper into the in-box she turned to the left and struck her left elbow on either the cubicle trim or a standing file cabinet. She stated she immediately felt excruciating pain, to the point it made her cry. She stated she continued to work, but did not immediately report her injury. Petitioner testified she gave oral notice to her supervisor, Jim Neposrehlan, on August 27, 2010, after her symptoms had not subsided.

On cross-examination Petitioner admitted she filled out certain forms when filing her workers' compensation claim. She was shown three forms – Illinois Form 45, Employee's Notice of Injury, and the Supervisor's Report of Injury. (RX 1) She acknowledged she had to call into Caresys to provide claim information, which is contained in the Illinois Form 45. She also acknowledged she filled out and signed the Employee's Notice Injury. Further, she agreed she provided the Supervisor's Report of Injury to her supervisor for him to fill out. She agreed all forms showed the time of injury to be 3:30 p.m., not after hours as she had testified. The Supervisor's report also indicates oral notice was not given until October 19, 2010. It is signed by Jim Neposrehlan and Petitioner confirmed his signature on the document when testifying at arbitration.

Petitioner testified she was not certain if she struck her arm on a file cabinet or cubicle trim because the two were close together. She stated hitting her elbow made a sound, but could not remember what kind of sound (such as if it was metallic or not). She agreed, however, both the cubicle and the file cabinet are stationary objects. She also stated neither was defective in anyway. Petitioner described the cubicle layout in detail, but did not note any deficiencies with the set up. She also did not describe any deviation from the standard, because, as she stated, she didn't know what standard cubicles were. She stated nothing in particular caused her strike her elbow; nothing was sticking out, and nothing fell on her. She testified she was walking within the unit, not running, and the accident did not happen under extenuating circumstances. She testified she was simply standing in the middle of the cubicle, turned around and struck her elbow on something.

Petitioner admitted she waited two months before seeking treatment. She stated her symptoms never improved so she decided to see Dr. Diana Widicus, her primary care physician on October 18, 2010. (RX 2)

Petitioner testified she underwent three injections but nothing more could be done. Surgery, according to her, is not an option due to the location of the nerve. Petitioner testified to occasional "excrutiating shooting pain" from the middle of her elbow up her arm about half-way. She also claims diminished grip strength. When sitting, gardening, or playing with her grandchildren she may experience a "jolt" which lasts a few seconds. It happens maybe 6-7 times per week but may occur more often which is why she occasionally stretches her arm a certain way. Petitioner further testified that she tries not to grab things as she is concerned she might drop them if she experiences a jolting episode. Petitioner testified to trouble putting her left arm out the car window when going through drive-up windows at banks and fast food restaurants so she does not frequent them as often as she used to.

Petitioner is right hand dominant.

Petitioner's medical bills are contained in PX 4 and consist of charges to the Orthopaedic Center of Illinois, Dr. Watson, and prescriptions. The Orthopaedic Center bill totals $1307.00. Dr. Watson's bill totals $748.00. Petitioner paid $10.00 for prescriptions. Petitioner testified her co-pays were paid by herself while her personal insurance covered the balances on the bills.

The Arbitrator concludes:

1. **Petitioner's Credibility**

   Petitioner was a credible witness concerning the details of her accident as she testified in detail and with clarity concerning the layout of Unit 7, her job duties, and the mechanism of injury. However, Petitioner was not as credible concerning the nature and extent of her injury as her testimony seemed somewhat exaggerated and dramatic as when she described "a lot of excruciating pain in her funny bone" with "shooting pain" that brought "tears to her eyes." The Arbitrator finds Petitioner believable regarding ongoing issues with her left arm but just not to the degree she claims.

2. **Accident**

Petitioner sustained an accident on August 19, 2010 that arose out of and in the course of her employment with Respondent. Petitioner testified that the cubicles are congested and there isn't a lot of space. Petitioner's job requires her to walk to various cubicles throughout the unit to deliver papers. No evidence was presented suggesting that the unit and the area(s) around the cubicles is open to the public. As such, and due to the demands and requirements of Petitioner's job, Petitioner is exposed to a risk of injury to a greater degree than that of the general public. While the first specific mention of placing a piece of paper in an "In Box" was made at arbitration Petitioner's history as found in Dr. Watson's Injury Report Form, history to Dr. Watson, and Employer's First Report of Injury are consistent with Petitioner's testimony. Any discrepancies in the time of the accident are minor and insignificant.

3. **Notice**

Prior to the arbitration hearing Petitioner completed a Request for Hearing form (AX 1) in which she indicated that notice was given to her section chief, Jim Neposrehlan, on/about August 27, 2010. Thus, Respondent was aware of the identity of the individual Petitioner would be claiming she provided notice to. Petitioner testified that she orally notified Mr. Neposrehlan approximately one week later. Petitioner's testimony to that effect was unrebutted as Mr. Neposrehlan did not testify.

Respondent challenges notice on the basis of the October 19, 2010 CMS documents (RX 1). Petitioner completed a Notice of Injury form on that date and identified Mr. Neposrehlan as the person to whom she reported her injury. She did not indicate the date or time. While Mr. Neposrehlan completed a supervisor's report and indicated he received oral notice on October 19, 2010, he also stated in the report that the accident occurred on "August 17, 2010." Petitioner's accident date is August 19, 2010. The Arbitrator reasonably infers that Petitioner either had another accident on August 17, 2010 or Mr. Neposrehlan incorrectly noted the date of accident. If the latter, the Arbitrator reasonably infers that if he made a mistake as to the date of accident he may have also made a mistake as to when notice was provided. Had he appeared at trial and testified, the matter might have been clarified. As such, Petitioner's testimony regarding oral notice being provided in late August of 2010 remains unrebutted.

4. **Causal Connection.**

Petitioner testified that after the accident, she went to see Dr. Widicus, who referred her to Dr. Watson. Dr. Watson took a history from Petitioner and in his records of October 22, 2010 stated that "she struck the lateral aspect of the elbow against a cubicle wall. She developed pain which has persisted to this day." (P X 3) Petitioner credibly testified that prior to the injury of August 19th, 2010 she had not sustained any injuries to her left elbow, and had never experience pain in her left elbow prior to the injury of August 19th, 2010. As such causation is established through Petitioner's credible testimony, the treating medical records, and a chain of events. Respondent

presented no evidence refuting causal connection; rather, its defense was based upon whether Petitioner's accident arose out of her employment.

5. **Medical Expenses.**

Having found in Petitioner's favor on the issues of accident and causal connection, Petitioner is awarded medical bills in the amount of $2,065.00 as set forth in PX 4 and subject to the Medical Fee Schedule. These bills include prescription charges of $10.00, services by Dr. Watson in the amount of $748.00, and outstanding charges to the Orthopaedic Center of Illinois ($1,307.00). All of these bills relate to treatment incurred by Petitioner as a result of her work injury. Respondent claimed no 8(j) credit.

6. **Nature and Extent**

Petitioner's elbow has been treated conservatively. No surgery has been recommended at this time. Petitioner was diagnosed with both lateral epicondylitis and a radial nerve contusion. While Dr. Maender believed Petitioner also had some shoulder impingement due to overcompensation, she seems to have recovered from it and has had no further treatment beyond some therapy nor did she testify to any ongoing shoulder problems.

Petitioner testified she was released from Dr. Maender's care on December 7, 2011. At that time Dr. Maender noted Petitioner complained of pain over her left lateral epicondyle, but also noted she had aggravated it "doing work over Thanksgiving." He diagnosed Petitioner with persistent left lateral epicondylitis with some non-contributing radial nerve irritation. At that time he recommended home exercises and avoidance of aggravating activities.

Petitioner testified she continues to experience shooting pains approximately 6-7 times per week with activities. She stated the pain can be "excruciating." She also complains of decreased grip strength and a tendency to drop things. Petitioner testified she has not returned to see Dr. Maender since she was released from his care. She further testified, despite her recurring pain, she has not sought medical treatment with any of her other doctors since being released in December of 2011.

Petitioner continues to work for Respondent on a full duty basis. She had no lost time from work nor has she been given any formal restrictions. She appears to be working without any problems except for some occasional pain and occasional dropping of papers.

Having found in Petitioner's favor on the issues of accident and causal connection, and based upon Petitioner's treatment records, the Arbitrator awards Petitioner permanent partial disability in the amount of 5% loss of use of the left arm pursuant to Section 8(e) of the Act.

****

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Danny Burgess,

Petitioner,

14IWCC0348

vs. NO: 11 WC 47207

Tri County Coal, LLC,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, causal connection, permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 7, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAY 0 5 2014

David L. Gore

Stephen Mathis

Mario Basurto

DLG/gal
O: 4/24/14
45

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

BURGESS, DANNY
Employee/Petitioner

Case# **11WC047207**

14IWCC0348

TRI COUNTY COAL LLC
Employer/Respondent

On 8/7/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1539 DRUMMOND LAW LLC
PETE DRUMMOND
PO BOX 130
LITCHFIELD, IL 62056

0332 LIVINGSTONE MUELLER ET AL
DENNIS O'BRIEN
P O BOX 335
SPRINGFIELD, IL 62705

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

DANNY BURGESS
Employee/Petitioner
v.
TRI COUNTY COAL, LLC
Employer/Respondent

Case # 11 WC 47207
14IWCC0348

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of **Springfield**, on **June 18, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☒ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other

FINDINGS

14IWCC0348

On **November 26, 2011**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$55,474.03**; the average weekly wage was **$1,066.81**.

On the date of accident, Petitioner was **56** years of age, ***married*** with **0** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$0** for TTD, **$0** for TPD, **$0** for maintenance, and **$7,339.89** for other benefits, for a total credit of **$7,339.89**.

Respondent is entitled to a credit for all medical bills paid by it or through its group plan under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $711.21/week for 26 2/7 weeks, commencing November 29, 2011 through May 30, 2012, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $640.09/week for 100 weeks, because the injuries sustained caused the 20% loss of use to the person as a whole, as provided in Section 8(d)2 of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

07/31/2013
Date

AUG 7 - 2013

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

DANNY BURGESS
Employee/Petitioner

14IWCC0848

v.

Case# 11 WC 47207

TRI COUNTY COAL, LLC
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

Petitioner, Danny Burgess, was employed in the coal mining industry from 1974 until his retirement in 2012. (See Petitioner's Exhibit (PX) 5, Petitioner's Deposition Exhibit 3). He performed a variety of laboring duties during his mining tenure. Petitioner testified he worked for Respondent or a group of mines affiliated with Respondent for twelve years, or from approximately 1999-2012. (See also PX 5, Petitioner's Dep. Exh. 3). In 2011, Petitioner was classified as "INBY," which meant he could have been classified into any of the following jobs: roof bolter operator, mine operator, ram car operator, and "utilityman." (PX 1). Petitioner testified that he worked all of the foregoing jobs during his time classified as INBY with the exception of a mine operator. Petitioner testified at length concerning the duties of the three positions he worked when an INBY with Respondent, *i.e.*, a roof bolter, a ram car operator and a utilityman.

As a roof bolter, Petitioner testified that the primary goal of these duties was to install pins in the mine's roof so as to hold up and secure the roof. Petitioner testified that while a machine was used to perform most of the roof bolting work, there was also significant physical and overhead work involved. He testified that the machine could not manually put pins up into the roof, and that the worker performs this aspect of the job. He testified that not all pins placed in the roof fit like they should. He noted that if there was an eight foot pin, such a pin has a bent nature to it, and when pushed into the roof hole, the roof bolter employee would have to push it with his hand to straighten it out, using considerable force with his shoulders. Petitioner testified that the difficulty in pushing up the pins was also commensurate with how high the roof was, in that the lower the ceiling, the easier it was to insert the pin. He noted that there was significantly more manual labor involved with a high and ragged (or unsmooth) ceiling. Petitioner testified that the use of a pry bar was needed as a roof bolter to knock down loose rock overhead, and that said action required a lot of overhead shoulder use.

Petitioner testified that a "ram car" was essentially an underground dump truck used in Respondent's coal mine to transport mined coal to a conveyor belt. The ram car operator would drive this vehicle underground in the mine performing these transportation duties. Petitioner also testified that other

duties were associated with being a ram car operator. When one entry was mined out, the mining machine would then move into a new entry and set up to begin to load coal. Petitioner testified that the ram car operator would assist with the physical lifting aspects involved in these moves. Petitioner testified that said move would occur between twelve-to-fifteen times per eight-to-nine hour shift. Petitioner stated that ram car operators would also hang "curtains" (which he testified was overhead work), build "stoppings" (metal or concrete – which included overhead work), and hang miner cable (or at times just throwing the cable out of the way – again which Petitioner testified was overhead work). Petitioner also testified that if the "belt tail" needed shoveled, a ram car operator would perform this shoveling work at times. All of the aforementioned ancillary duties of a ram car operator involved considerable physical labor, according to Petitioner (about four-to-five hours per shift), and he further testified that all of these duties were hard on his shoulders.

Petitioner testified that the duties of a utilityman involved transporting bolting material for unloading, so that the roof bolters would have supplies for which to perform their roof bolting duties. The utilityman would also utilize a machine that used a bucket to scoop loose coal and "glob" away so that the area was cleaner for the incoming roof bolters. The utilityman would also spray a wet substance onto surfaces to keep the area non-combustible. The utilityman would make the spray material in question, by which he would dump 50 pound bags of rock dust into a metal pot and then mix water with it.

Petitioner testified that he performed all three of the aforementioned jobs with Respondent at varying times, performing the duties of a utilityman the least amount of time. Records offered from Respondent indicated that Petitioner performed the duties of ram car operator a majority of the time from January 2009 through November 2011, but that he also performed the duties of roof bolting and utilityman during that timeframe. (RX 10). Petitioner testified that just because a worker was classified at the beginning of the shift on one of the particular three jobs did not mean that at anytime throughout a shift said worker would be taken off the initial, labeled assignment and placed on one of the remaining two other job assignments. For example, Petitioner testified that if a worker was set to be a ram car operator and a roof bolter left work due to illness, the ram car operator could be placed as a roof bolter for the rest of the shift. When this occurred, the worker would still be classified in Respondent's records by the position he started in that shift (*e.g.*, a ram car operator transferred to a roof bolter position would still be classified as a ram car operator for that shift in Respondent's records). Petitioner testified that this change happened fairly regularly, and when it occurred it was usually just for a part of the shift.

John LeGrand testified on behalf of Respondent. Mr. LeGrand is a mine superintendant with Respondent and was a mine supervisor before that for 33 years. Mr. LeGrand listened to Petitioner's testimony at trial and believed it was "overstated." Mr. LeGrand testified that a ram car operator would only perform the physical labor aspect of the job for two hours or less per shift, as opposed to Petitioner's testimony that the physical work would consist of four-to-five hours per shift. Mr. LeGrand confirmed Petitioner's testimony that an INBY worker could change positions during a shift due to a worker leaving for health reasons, but that said change would not occur very often.

Petitioner is claiming a repetitive trauma injury to both shoulders with a manifestation date of November 26, 2011. Petitioner testified to pre-existing issues concerning his shoulders. Respondent also offered into evidence various accident reports and medical records relating to injuries Petitioner incurred to his shoulders (primarily his right shoulder), as well as various other body parts. (RX 3-8). Petitioner testified that all of the foregoing shoulder complaints indicated in Respondent's records resolved prior to his claimed manifestation date of November 26, 2011. He further testified that he had no "real" medical treatment to his shoulder before October 2011, with the exception of therapy or medication.

Petitioner testified that sometime in July 2011, he noticed severe bilateral shoulder pain when performing overhead work duties. In approximately August or September 2011, he presented to Dr. Brian Quarton concerning his shoulder complaints, and testified that he was in turn referred to orthopedic surgeon Dr. Rodney Herrin for these symptoms. (See also PX 5, p. 7; PX 3). Petitioner first presented to Dr. Herrin on October 6, 2011. (PX 3; PX 5, p. 7). Petitioner reported to Dr. Herrin that his shoulder complaints began approximately three months prior, and that he worked as a coal miner performing "quite a bit" of overhead work. (PX 5, pp. 8, 47). Dr. Herrin ordered physical therapy and a corticosteroid injection into each shoulder. (PX 5, pp. 10-11; PX 3). MRI testing was also performed. (PX 3; PX 4).

Petitioner underwent left shoulder surgery by Dr. Herrin on November 29, 2011. (PX 3). The surgery consisted of a left shoulder arthroscopy with repair of the supraspinatus tendon, a subacromial decompression, a distal clavicle excision, and debridement of tearing of the superior labrum. (PX 3; PX 5, p. 10). The post-operative diagnosis noted was left shoulder pain secondary to full-thickness attenuated tear of the supraspinatus and tearing of the superior labrum, as well as a symptomatic acromioclavicular (AC) joint.

Petitioner was taken off work by Dr. Herrin on the date of surgery for a then-undetermined period of time. (PX 3). Petitioner testified that he worked directly up until the date of surgery, but took a "personal day" the day before surgery. A note from Dr. Herrin dated January 26, 2012 indicated Petitioner was still held off of working per the doctor's order. Petitioner also underwent physical therapy following the left shoulder surgery. (PX 3).

Dr. Herrin authored a letter to Petitioner's counsel dated January 23, 2012. Dr. Herrin reported the following in that note: "The assumption is that [Petitioner's] employment is as a coal miner would involve overhead drilling of holes and installing roof bolts, hanging cables overhead (which weigh approximately 70 pounds per cable), building brattice walls and ceilings out of concrete block, which weigh approximately 40 pounds or more per block (for ventilation and running a ram car)." Dr. Herrin further reported as follows: "It is my opinion that the problems with both of [Petitioner's] shoulders are related to his work activities as a coal miner. It is my opinion that those activities would have caused or at least significantly contributed to the problem with each shoulder. The type of work that he does as a roof bolter would put significant stress on the shoulders, and this would place him at significant risk for injury to the rotator cuff." (PX 5, Petitioner's Dep. Exh. 2).

Petitioner underwent right shoulder surgery by Dr. Herrin on February 10, 2012. (PX 3). The surgery consisted of a right shoulder arthroscopy with repair of the supraspinatus tendon with suture anchors, a subacromial decompression and a distal clavicle excision. (PX 3; PX 5, p. 12). The post-operative diagnosis noted to Petitioner's right shoulder was pain secondary to significant articular-sided tear of the supraspinatus, subacromial impingement and a symptomatic AC joint. (PX 3).

Petitioner underwent a post-operative course of physical therapy, and was given work restrictions on March 9, 2012 of no use of the right arm and minimal use of the left arm, with no pushing, pulling, lifting or overhead work. The work restriction note also stated that if those restrictions could not be accommodated, then Petitioner was to remain off work at that time. Notes from Dr. Herrin dated April 19, 2012 and May 21, 2012 continued the work restrictions. (PX 3). Petitioner did not return to work during this time (RX 9), but testified he received "sickness/accident" pay until approximately May 24, 2012. (See also Arbitrator's Exhibit (AX) 1). Petitioner testified that he retired from Respondent's employment at the end of May 2012, as Respondent would not allow Petitioner to work with the restrictions in place by Dr. Herrin. A note signed by Petitioner indicates that he terminated his employment with Respondent

effective June 11, 2012. (RX 11). Mr. LeGrand testified that it was Respondent's policy to bring back and accommodate "almost all" injured workers with effective restrictions. He testified that workers returning with light duty restrictions can run ram cars, but he could not say for certain whether there were any light duty workers on ram cars currently that had restrictions of no overhead lifting.

Petitioner presented to Dr. Herrin on July 30, 2012. Petitioner noted on that visit that he still experienced some bilateral shoulder pain. Dr. Herrin noted that Petitioner was retired, so he did not offer any specific work restrictions, other than using the shoulders as tolerated. Dr. Herrin set a follow-up appointment to occur in the following eight weeks, and noted that if Petitioner was progressing satisfactorily at that time, then he would be released from care concerning his shoulder problems. (PX 3). Petitioner last presented to Dr. Herrin on September 10, 2012. Dr. Herrin released Petitioner on this date, noting he was "functioning fairly well" and for him to return on an "as-needed" basis. Petitioner was released at maximum medical improvement (MMI). (PX 3; PX 5, p. 37).

Dr. Herrin's deposition testimony was taken on September 20, 2012. (PX 5). Dr. Herrin confirmed his opinion noted in his January 2012 letter that Petitioner's bilateral shoulder conditions that required surgery were caused or contributed by Petitioner's work activities in Respondent's coal mine. (PX 5, pp. 9-10). Dr. Herrin testified that Petitioner only reported his roof bolting activities to the doctor, but that he learned of the specific work duties at issue, including Petitioner's overhead cable hanging duties, brattice wall and ceiling building and running a ram car, from a letter drafted by Petitioner's counsel. (PX 5, pp. 37-38). Dr. Herrin also testified as to some familiarity with Petitioner's work duties, as the doctor had previously worked in a coal mine before becoming a physician. (PX 5, p. 38).

On November 5, 2012, Petitioner presented to Dr. Mitchell Rotman for an evaluation at Respondent's request pursuant to Section 12 of the Illinois Workers' Compensation Act, 820 ILCS 305/1 *et seq*. (hereafter the "Act"). (RX 1, Dep. Exh. 2). Dr. Rotman's deposition testimony was taken on February 5, 2012. (RX 1). The doctor's diagnosis concerning Petitioner's shoulders was similar to that as referenced by Dr. Herrin, although Dr. Rotman added that he felt the existence of a bone spur could have caused rubbing and thinning of the rotator cuff. (RX 1, p. 14; RX 1, Dep. Exh. 2). Dr. Rotman reported that it was impossible to state with any reasonable degree of certainty that Petitioner's bilateral shoulder complaints were a direct result of his alleged work-related injuries without knowing what outside activities Petitioner may have been performing and without knowing the exact percentage of overhead work Petitioner was performing in the coal mine. Dr. Rotman also noted the following: "If Mr. Burgess was doing a lot of overhead work in July 2011, then that type of work could be an aggravating factor for an underlying chronic bilateral impingement condition. If, however, Mr. Burgess was not doing a lot of overhead work in July 2011, then that type of work would be considered an aggravating factor." (RX 1, Dep. Exh. 2). Dr. Rotman reiterated this point during his deposition, stating, "[a]nd if you're doing continuous overhead work for several hours a day, then that's the kind of job that would be an aggravating factor for a chronic condition like this." (RX 1, p. 20). The following exchange occurred between Petitioner's counsel and Dr. Rotman:

> [Q]: Would it be fair to say that if it were established that the claimant did a lot of heavy lifting, and particularly overhead work or just lifting generally with his shoulders, that it would tend to be an aggravating factor in his shoulders?
>
> [A]: If the lifting were shoulder level or above, it certainly would be an aggravating factor.
>
> (RX 1, pp. 24-24).

Dr. Rotman said he was unfamiliar with what would be involved in hanging cables or constructing brattice walls in coal mines (RX 1, p. 24). Dr. Rotman was also unaware of how much time Petitioner would spend performing the jobs in the mine as described by Petitioner's counsel, such as hanging cables. (RX 1 p. 28).

Petitioner testified concerning current symptoms he experiences with his shoulders, including continuing pain that is about the same level of intensity in each shoulder. Any reaching or lifting of the arms bothers Petitioner. He testified that his shoulder difficulties do not affect his hobbies. His shoulders ache at times during the night, and when this occurs, he takes extra strength Tylenol. He does not take any prescription medication. The most he allows himself to lift with his arms is fifteen pounds. He noted that this was not a restriction per his physician, but rather the threshold weight limit he notices regarding the level of pain intensity when lifting.

The parties noted at trial that all medical expenses regarding the treatment Petitioner received in this matter was paid through Respondent's group insurance pursuant to Section 8(j) of the Act.

CONCLUSIONS OF LAW

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?;

Issue (D): What was the date of the accident?; and

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

The Arbitrator finds that Petitioner sustained a repetitive trauma injury to his bilateral shoulders that arose out of and in the course of his employment with Respondent, and that his current condition of ill-being is causally related to the work injury. While Petitioner had pre-existing shoulder complaints before November 2011, the Arbitrator notes that these issues occurred in 1993, 1994, 1995 and 2007. Medical records from 1993 indicate that Petitioner injured his right elbow at work, and in the process suffered a right shoulder strain. He underwent some therapy and was given a prescription of ibuprofen for this injury. (RX 7). In 1994, Petitioner completed an accident report, noting he felt a right shoulder "pop" at work. No medical records are associated with this injury. (RX 5). Petitioner also experienced a right shoulder injury in mid-1995, where he was again diagnosed with a strain and prescribed medication. He was taken off work for one day for this incident. (RX 4; RX 8). In 2007, Petitioner noted a left shoulder contusion as a result of another ram car striking his ram car. No medical records are associated with this injury. (RX 6). Petitioner testified that he had no "real" medical treatment to his shoulder before October 2011, with the exception of therapy and medication prescription. The Arbitrator finds that Petitioner is correct in this regard. Petitioner testified to feeling bilateral shoulder pain with lifting in July 2011. Dr. Herrin's records support this contention. Petitioner continued performing his duties to the point where medical intervention was required. The Arbitrator finds that any pre-existing shoulder conditions up to this time were asymptomatic in light of the foregoing discussion concerning Petitioner's prior problems and minimal treatment.

While there is some dispute as to how much physical and overhead work Petitioner actually performed between 2009 and 2011, the evidence supports Petitioner's assertions that he was engaged in laborious duties while working for Respondent, and that said duties included regular and repetitive

overhead work. The records show that Petitioner worked as a ram car operator for the majority of time during this period. He testified to myriad other physical activities that were a part of this position, and that those physical duties were performed four-to-five hours per shift. Mr. LeGrand testified that these physical duty aspects of being a ram car operator as described by Petitioner would only be performed two hours or less per shift. Regardless of who is more accurate, the fact remains that Petitioner was performing regular physical activity with his arms as a ram car operator. Petitioner also worked as a utilityman and a roof bolter during this timeframe, albeit less than working as a ram car operator. The duties involved with these positions also involved repetitive and physical use of the arms, including overhead lifting. Furthermore, while Mr. LeGrand testified that it was not very often that a ram car operator would be transferred to the position of utilityman or roof bolter during a shift, he confirmed that said changing of positions did occasionally occur.

Both treating physician Dr. Herrin and examining physician Dr. Rotman believe that overhead work in coal mining could cause or contribute to the type of shoulder injuries suffered by Petitioner. Dr. Herrin, who testified to having some familiarity with coal mine work given he was a coal miner before his medical career began, noted that in addition to performing roof bolting, Petitioner had duties involving "hanging cables overhead (which weigh approximately 70 pounds per cable), building brattice walls and ceilings out of concrete block, which weigh approximately 40 pounds or more per block (for ventilation and running a ram car)." Dr. Herrin reported the following in light of his understanding of Petitioner's job duties: "It is my opinion that the problems with both of his shoulders are related to his work activities as a coal miner. It is my opinion that those activities would have caused or at least significantly contributed to the problem with each shoulder. The type of work that he does as a roof bolter would put significant stress on the shoulders, and this would place him at significant risk for injury to the rotator cuff." (PX 5, Petitioner's Dep. Exh. 2). Dr. Rotman said he was unfamiliar with what would be involved in hanging cables or constructing brattice walls in coal mines, and was further unaware of how much time Petitioner would spend performing the other jobs in the mine, such as hanging cables. (RX 1 p. 28).

The Arbitrator places great weight on the opinions of Dr. Herrin in this matter concerning causal connection and a manifestation of a work accident. Based on the foregoing facts, the Arbitrator finds that Petitioner has met his burden of proving repetitive trauma injuries to both shoulders that were caused or contributed by his coal mining duties, and that his current condition of ill-being is causally related to those work duties and resulting injuries.

The Arbitrator also finds that November 26, 2011 is an appropriate manifestation date for the claimed injuries. November 26, 2011 is the date that Petitioner stopped working in preparation for his surgery to his left shoulder. The definitive diagnoses regarding his bilateral shoulders had recently been issued by Dr. Herrin at that time. This was a date that a reasonable person in Petitioner's position would have realized his condition could have been related to his work duties with Respondent.

Issue (K): What temporary benefits are in dispute? (TTD)

Petitioner was taken off work per Dr. Herrin on the day of his left shoulder surgery, November 29, 2011. Petitioner testified that he worked up through the date of his surgery, taking one "personal day" the day before surgery. Dr. Herrin kept Petitioner off work through the date of his right shoulder surgery, February 10, 2012, and continuing through March 9, 2012, when restrictions were noted of no use of the right arm and minimal use of the left arm, with no pushing, pulling, lifting or overhead work. Notes from Dr. Herrin dated April 19, 2012 and May 21, 2012 continued the work restrictions. Petitioner did not return to work during this time (RX 9), but testified he received "sickness/accident" pay until

approximately May 24, 2012. Petitioner testified that he retired from Respondent's employment at the end of May 2012, as Respondent would not allow Petitioner to work with the restrictions in place by Dr. Herrin. A note signed by Petitioner indicates that he terminated his employment with Respondent effective June 11, 2012. (RX 11). Mr. LeGrand testified that it was Respondent's policy to bring back and accommodate "almost all" injured workers with effective restrictions. He testified that workers returning with light duty restrictions can run ram cars, but that he could not say for certain whether there were any light duty workers on ram cars currently that had restrictions of no overhead lifting. Petitioner is claiming temporary total disability (TTD) benefits from November 28, 2011 through May 30, 2012. (See AX 1). The Arbitrator finds that May 30, 2012 is a reasonable date in which to terminate Respondent's liability for TTD benefits. Petitioner is not claiming any TTD due past this date, and in fact acknowledged retiring from Respondent at the end of May 2012. (See also RX 11, noting June 11, 2012 as the effective termination date).

Based on the foregoing, the Arbitrator awards Petitioner TTD benefits from November 29, 2011 (the date of his first surgery) through May 30, 2012, a period of 26 2/7 weeks. Respondent shall have a credit in the amount of $7,339.89 for non-occupational indemnity disability benefits that it paid. (See AX 1).

Issue (L): What is the nature and extent of the injury?

Petitioner's date of accident falls after September 1, 2011, and therefore Section 8.1b of the Act shall be discussed concerning permanency. It is noted when discussing the permanency award being issued that no permanent partial disability impairment report pursuant to Sections 8.1b(a) and 8.1b(b)(i) of the Act was offered into evidence by either party. This factor is thereby waived.

Concerning Section 8.1b(b)(ii) of the Act (Petitioner's occupation), the Arbitrator notes that Petitioner's occupation as a coal miner was a "heavy" demand level position and quite labor-intensive. However, there exists a dispute as to whether Petitioner retired due to Respondent's unwillingness to accommodate his restrictions. Dr. Herrin did not address work restrictions during Petitioner's final evaluation with the doctor in September 2012, as it was noted Petitioner was retired. Mr. LeGrand testified that it was Respondent's policy to accommodate almost all workers with restrictions, and in fact several employees with Respondent are working with restrictions. However, he was not aware of any current ram car operators on restrictions who would be working with a restriction of no overhead lifting. The fact remains that Petitioner is retired, and nothing in the record indicates that he plans on looking for future employment. Based on the foregoing, only some weight is afforded this factor when determining the permanency award.

Concerning Section 8.1b(b)(iii) of the Act (Petitioner's age at the time of injury), the record indicates that Petitioner was 56 years old on November 26, 2011. (See AX 1; AX 2, noting a birth date of July 2, 1955). At the time of trial, Petitioner was retired, and voiced no indication of returning to work in any capacity. The Arbitrator notes that in terms of future working years, especially given Petitioner's retirement, Petitioner is a somewhat older individual with fewer working years ahead of him than that of a younger worker, and thus will not have to work and live with the permanency of his condition as long. The Arbitrator gives weight to this factor when determining the permanency award.

Concerning Section 8.1b(b)(iv) of the Act (Petitioner's future earning capacity), the Arbitrator again notes the dispute concerning the true cause of Petitioner's retirement. Petitioner testified that he retired after Respondent would not accommodate his restrictions. Nothing in the record indicates that he

looked for other employment opportunities within his restrictions. In fact, Petitioner did not even claim entitlement to TTD benefits past May 30, 2012, presumably because he was content with retirement. In light of the foregoing, the Arbitrator finds that there is not enough solid evidence to prove Petitioner's future earning capacity was diminished solely as a result of the work injuries. Only some weight is placed on this factor when determining the permanency award.

Concerning Section 8.1b(b)(v) of the Act (evidence of Petitioner's disability corroborated by the treating medical records), the Arbitrator notes Petitioner suffered repetitive trauma injuries to both arms that necessitated surgeries to each shoulder. The left shoulder surgery consisted of an arthroscopy with repair of the supraspinatus tendon, a subacromial decompression, a distal clavicle excision, and debridement of tearing of the superior labrum. The right shoulder surgery consisted of an arthroscopy with repair of the supraspinatus tendon with suture anchors, a subacromial decompression and a distal clavicle excision. The post-operative diagnosis to Petitioner's left shoulder was pain secondary to full-thickness attenuated tear of the supraspinatus and tearing of the superior labrum, as well as a symptomatic AC joint. The post-operative diagnosis to Petitioner's right shoulder was pain secondary to significant articular-sided tear of the supraspinatus, subacromial impingement and a symptomatic AC joint. (PX 3). Petitioner underwent post-operative physical therapy. As noted *supra*, the issue of permanent work restrictions is ambiguous because Petitioner retired while on work restrictions per Dr. Herrin, and Dr. Herrin never formally noted current work restrictions due to Petitioner's retirement. At Petitioner's final evaluation with Dr. Herrin, the doctor noted Petitioner was "functioning fairly well" and for him to return on an "as-needed" basis. Petitioner was released at MMI on this date, and the record indicates that Petitioner has not returned to Dr. Herrin since that time. Petitioner testified to current complaints with his shoulders, including pain and difficulty with reaching and lifting his arms. He testified that the level of pain is the same in each shoulder. He does not take prescription medication, but does take over-the-counter pain medication at times for his shoulder discomfort. His current shoulder limitations do not affect any of his hobbies. The Arbitrator finds Petitioner's complaints concerning his current disability credible and corroborated by the treating medical records. Accordingly, great weight is placed on this factor when determining the permanency award.

Based on the foregoing, the Arbitrator finds that Petitioner has sustained the 20% loss of use to the person as a whole pursuant to Section 8(d)2 of the Act as a result of the bilateral shoulder injuries, and is awarded permanent partial disability benefits accordingly. *See Will County Forest Preserve Dist. v. Workers' Comp. Comm'n*, 2012 IL App (3d) 110077WC.

STATE OF ILLINOIS)
) SS.
COUNTY OF MC LEAN)

☒ Affirm and adopt with clerical correction	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Danny Jarrett,

14IWCC0349

Petitioner,

vs. NO: 11 WC 04346

Pontiac Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, causal connection, medical expenses, permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission corrects the clerical error found within the Arbitrator's Decision. In the Order section of the Decision of the Arbitrator, second paragraph, the Commission corrects the clerical error to: "All claims for compensation made by Petitioner in this matter are hereby denied."

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 5, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

DATED: MAY 0 5 2014

David L. Gore

Stephen Mathis

Mario Basurto

DLG/gal
O: 4/24/14
45

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

JARRETT, DANNY
Employee/Petitioner

Case# **11WC004346**

14IWCC0349

PONTIAC CORRECTIONAL CENTER
Employer/Respondent

On 9/5/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.05% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0190 LAW OFFICES OF PETER F FERRACUTI
THOMAS M STOW
110 E MIN ST
OTTAWA, IL 61350

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PKWY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

5116 ASSISTANT ATTORNEY GENERAL
GABRIEL CASEY
500 S SECOND ST
SPRINGFIELD, IL 62706

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST
13TH FLOOR
CHICAGO, IL 60601-3227

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

SEP 5 2013

KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF MCLEAN)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

14IWCC0349

DANNY JARRETT,
Employee/Petitioner

v.

PONTIAC CORRECTIONAL CENTER,
Employer/Respondent

Case # 11 WC 04346

Consolidated cases: NONE.

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joann M. Fratianni**, Arbitrator of the Commission, in the city of **Bloomington**, on **April 8, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other: _____

FINDINGS

14IWCC0349

On **January 10, 2011**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this alleged accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is not*** causally related to the alleged accident.

In the year preceding the alleged injury, Petitioner earned **$63,794.12**; the average weekly wage was **$1,266.81**.

On the date of alleged accident, Petitioner was **55** years of age, ***married*** with **no** dependent children under 18.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $ **0.00** for TTD, $ **0.00** for TPD, $ **0.00** for maintenance, and $ **0.00** for other benefits, for a total credit of $ **0.00**.

Respondent is entitled to a credit of $ **0.00** under Section 8(j) of the Act.

ORDER

Petitioner failed to prove he sustained an accidental injury arising out of and in the course of his employment with Respondent on **January 10, 2011.** Petitioner further failed to prove that his current claimed condition of ill-being was caused by any activities performed on behalf of Respondent.

All claims for compensation made by Respondent in this matter are hereby denied.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator JOANN M. FRATIANNI

August 30, 2013
Date

SEP 5 - 2013

C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

F. Is Petitioner's current condition of ill-being causally related to the injury?

Petitioner is employed as a correctional sergeant for Respondent. Petitioner testified his job duties have varied over 24 years based upon his assignments. Petitioner testified that he used keys to open and close doors and gates, used computers, engaged in pat downs of visitors and inmates, inspected vehicles, used telephones, engaged in service training of new officers and ongoing officers in enforcing and maintaining discipline, safety, sanitary, security and custodial matters. He was involved in monitoring inmate movement, performed safety inspections of rooms, cells, hallways, doors and windows. He directed correctional officers in their tasks, verified perimeter security and prepared reports of violations. He directly supervised yard and gym periods, supervised shift shakedowns, maintained movement log books, confirmed officers assigned to and relieved for meals and breaks, checked resident identification cards, secured the armory area prior to shift changes, made routine checks of tool accountability, confirmed daily security inspections were completed and forwarded documentation. He also monitored at risk inmates, verified the search of incoming inmates and property, verified staff completion of log books, ensured segregation inmates had necessary items and rights, and other tasks.

Petitioner testified he worked in the following areas of the facility: Armory, Training Center, Max Gatehouse, Chapel, Gymnasium, Administration Building, North Segregation, South Cell House, Healthcare, North Protective Custody, South Mental Health, South Segregation, on any of the 27 different towers, Program Building, Library, Gate 3, Visiting Rooms, and any other ground prison work other than Internal Affairs and Intelligence.

Petitioner testified each location presented different types of tasks and physical duties. Petitioner recalled being assigned to the South Protective Custody Unit for approximately 4 years at one point. Major Delong testified that Petitioner was mainly assigned to the Gatehouse and Sally Port in recent years. Petitioner testified he would perform correctional officer duties when he relieved them for lunch breaks. Those duties primarily involved using keys to give inmates items, to open cells, to hand cuff inmates and to open gates and doors to move inmates. Major Delong testified a sergeant may relieve a correctional officer, it is not primarily their responsibility and some times correctional officers do not receive lunch breaks and are simply paid extra for that inconvenience. Petitioner testified that he could relieve other officers up to 6 times a shift for 30 to 40 minutes at a time, while still being assigned to his regular positions.

Petitioner testified that during a 7-1/2 hour shift, he would turn hundreds of keys, using both hands, to open doors, cells and chuck holes. Petitioner testified he is right handed. Petitioner further testified that he used cranks to open all cells in a gallery at once, except for segregation units.

Petitioner claims he sustained an accidental injury to his elbows, wrists and arms due to repetitive work performed on behalf of Respondent that manifested on January 10, 2011.

Petitioner testified he first experienced symptoms in late 2010 when he was temporarily assigned as a lieutenant, overseeing a cell house that required him to deal with property and medical issues of inmates. In this position, he would take keys to open doors, was required to be present to open some doors, filled out move sheets, input visitor information on a computer, and performed inmate checks. Petitioner testified he would use computers for approximately one hour of a shift when assigned to a Cell House or a Gate House to check in visitors. Petitioner testified he would be reassigned to different areas every now and then.

Major Delong testified at the request of Respondent. Major Delong testified Petitioner was mainly assigned to the Gate House, where he would look up information on a computer, check visitor identification, pat down male visitors and staff, use a telephone and push buttons.

Major Delong testified Petitioner was also assigned to the Sally Port, where he would inspect paperwork, view vehicles entering and exiting the prison, and occasionally shake down those vehicles. When assigned to a Cell House, Petitioner would primarily instruct other correctional officers and speak with them concerning issues, but his primary task was not to physically assist them. Major Delong further testified he had no direct knowledge of how often Petitioner relieved correctional officers, how many keys he would turn in a day, or how many inmates he would be in contact with.

Petitioner sought treatment and came under the care of Dr. Joseph Newcomer, an orthopedic surgeon. Dr. Newcomer testified by evidence deposition (Px6) that he diagnosed Petitioner with bilateral carpal tunnel syndrome and cubital tunnel syndromes. Dr. Newcomer testified that he believed those syndromes were aggravated by the job activities performed by Petitioner. Dr. Newcomer felt that pulling and pushing on doors and the use of keys and computers were all problematic. Dr. Newcomer felt the opening and closing of a door once a day was aggravating on the nerve and these syndromes. When asked about Petitioner's specific job duties, Dr. Newcomer testified he did not have a job description, did not know what kind of doors he worked with, how often he would use keys or open doors, or how long he would use a computer. Dr. Newcomer testified he did not know the difference in duties between a correctional officer and a correctional sergeant. Dr. Newcomer testified he has not toured the prison, but felt he knew what kind of doors the prison uses and enjoys watching prison topic television shows such as "Lockup"

Dr. James Williams examined Petitioner. This examination was performed at the request of Respondent. Dr. Williams, an orthopedic surgeon, testified by evidence deposition. (Rx1) Dr. Williams testified that 99% of his practice involves treatment of upper extremities. He examined Petitioner on August 17, 2011 and reviewed a job description of a correctional sergeant with him. Petitioner informed him that for 23 years he has essentially been an assistant who turned keys for 2 to 2-1/2 hours a shift. He informed the doctor that while working the Gate House, he basically entered data in the computer, and that he did relieve others and performed key turning. Dr. Williams was of the opinion that Petitioner's job duties as explained to him, are not causative or aggravating to the diagnosed conditions of bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome.

Dr. Williams testified that work tasks that caused such syndromes usually included grinding, meat cutting, using vibratory tools, typing for more than 6 hours daily, or instances of direct traumas.

Petitioner did undergo bilateral carpal tunnel and cubital tunnel surgical releases with Dr. Newcomer and testified at the hearing he has no current symptoms and his elbows were "good."

In order maintain a claim for repetitive trauma, a claimant must prove by a preponderance of credible evidence that his work involves repetitive activity that gradually causes deterioration of or injury to a body part. In this case, Petitioner testified to various positions he worked over 24 years as a correctional officer and correctional sergeant, and briefly as a correctional lieutenant. Petitioner testified his work tasks varied throughout the day, based on the areas he was assigned. In instances of use of his hands, Petitioner did not identify any as being repetitive. Neither did Dr. Newsomer.

Based upon the sum total of evidence before this Arbitrator, this Arbitrator finds that Petitioner failed to prove he sustained an accidental injury through any type of repetitive trauma or activity on January 10, 2011.

Based further upon the above, the Arbitrator finds the condition of ill-being as claimed to be not causally related to any accidental injury while in the employment of Respondent.

J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

See findings of this Arbitrator in "C" and "F" above. Based upon these findings, all claims made for medical expenses by Petitioner are hereby denied.

K. What temporary benefits are in dispute?

See findings of this Arbitrator in "C" and "F" above. Based upon these findings, all claims made for temporary benefits by Petitioner are hereby denied.

L. What is the nature and extent of the injury?

See findings of this Arbitrator in "C" and "F" above. Based upon these findings, all claims made for permanent partial disability benefits by Petitioner are hereby denied.

STATE OF ILLINOIS)
) SS
COUNTY OF JEFFERSON)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Bill Sentel,

Petitioner,

vs.

NO. 13 WC 05662
14IWCC0350

Continental Tire North America, Inc.,

Respondent.

ORDER

This matter comes before the Commission on Respondent's Motion to Recall Pursuant to Section 19(f), stating that an error exists in the Commission's decision issued May 5, 2014 in the above captioned matter. Specifically, the Petitioner should have been awarded 99.65 weeks of permanent partial disability benefits.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated May 5, 2014 in the above captioned matter is hereby vacated and recalled pursuant to Section 19(f) of the Act. The parties should return their original decisions to Commissioner David L. Gore.

IT IS FURTHER ORDERED BY THE COMMISSION that a Corrected Decision and Opinion on Review shall be issued simultaneously with this Order.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUN 0 4 2014

DLG/gal
45

David L. Gore

Stephen Mathis

Mario Basurto

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Bill Sentel,

Petitioner,

vs.

NO: 13 WC 05662
14IWCC0350

Continental Tire North America, Inc.,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of the nature and extent of Petitioner's disability, evidentiary rulings, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 11, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $40,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUN 0 4 2014

DLG/gal
O: 4/24/14
45

David L. Gore

Stephen Mathis

Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

SENTEL, BILL
Employee/Petitioner

Case# **13WC005662**

14IWCC0350

CONTINENTAL TIRE NORTH AMERICA INC
Employer/Respondent

On 9/11/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.03% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1312 BEMENT & STUBBLEFIELD
GARY BEMENT
PO BOX 23926
BELLEVILLE, IL 62223

0299 KEEFE & DEPAULI PC
ANDREW J KEEFE
#2 EXECUTIVE DR
FAIRVIEW HTS, IL 62208

STATE OF ILLINOIS)
)SS.
COUNTY OF JEFFERSON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

14IWCC0250

Bill Sentel
Employee/Petitioner

v.

Continental Tire North America, Inc.
Employer/Respondent

Case # 13 WC 05662

Consolidated cases: n/a

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Mt. Vernon, on August 8, 2013. By stipulation, the parties agree:

On the date of accident (manifestation), February 18, 2012, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned $50,997.62; the average weekly wage was $1,030.98.

At the time of injury, Petitioner was 57 years of age, married, with 0 dependent child(ren).

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of $2,160.15 for TTD, $0.00 for TPD, $0.00 for maintenance, and $21,650.65 for other benefits (permanent partial disability benefits), for a total credit of $23,810.80.

At trial, the parties stipulated that temporary total disability benefits were paid in full and that Respondent had made weekly advance payments of permanent partial disability benefits of $21,650.65.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $618.59 per week for 99.65 weeks because the injuries sustained caused the 15% loss of use of the right arm, 15% loss of use of the left arm, and 12 1/2 % loss of use of the left hand as provided in Section 8(e) of the Act. Respondent shall be given a credit for weekly advance payments of permanent partial disability benefits of $21,650.65, as well as any subsequent advance payments of permanent partial disability benefits.

Respondent shall pay Petitioner compensation that has accrued from September 10, 2012, through August 8, 2013, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

William R. Gallagher, Arbitrator

September 6, 2013
Date

SEP 11 2013

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained a repetitive trauma injury arising out of and in the course of his employment for Respondent. The Application alleged a date of accident (manifestation) of February 18, 2012, and that Petitioner sustained repetitive trauma to the bilateral upper extremities. There was no dispute as to the compensability of this case and the only disputed issue at trial was the nature and extent of disability.

Petitioner was hired by Respondent in 1992 and he worked for Respondent as a truck tire builder. Petitioner's job duties included pushing cassettes, splicing rubber by hand, hand stitching and lifting tread. Petitioner generally work nine to 12 hours per day. Over time, Petitioner developed symptoms in both upper extremities.

At the direction of the Respondent, Petitioner was examined by Dr. David Brown, an orthopedic surgeon, on April 12, 2012. At that time, Petitioner informed Dr. Brown of having a one year history of numbness/tingling in both hands, primarily the little and ring fingers as well as pain in both elbows. Dr. Brown examined Petitioner and opined that his findings were consistent with bilateral cubital tunnel syndrome and carpal tunnel syndrome of the left hand. Dr. Brown further opined that Petitioner's job as a truck tire builder was an aggravating factor for the development of the conditions he diagnosed.

Dr. Brown ordered nerve conduction studies which, when performed by Dr. Dan Phillips, confirmed his diagnosis. He initially treated the conditions conservatively with splints and medication. When Petitioner was seen by Dr. Brown on June 4, 2012, he advised that his symptoms had not improved. Dr. Brown performed surgery on July 12, 2012, which consisted of a right cubital tunnel release, ulnar nerve transposition and myofascial lengthening of the flexor pronator tendon. Dr. Brown performed surgery on August 2, 2012, which consisted of a left carpal tunnel release and left cubital tunnel release, ulnar nerve transposition and myofascial lengthening of the flexor pronator tendon.

Subsequent to the surgeries, Petitioner remained under Dr. Brown's care and received physical therapy. Dr. Brown released Petitioner to return to work without restrictions on September 10, 2012. At the time of that visit, Petitioner stated that he had a complete resolution of the numbness/tingling in his hands but still had some residual soreness in the elbows.

At the direction of Respondent, Petitioner was examined by Dr. Brown on November 14, 2012. Based on that examination, Dr. Brown opined that Petitioner had an impairment of one and one-half percent (1 1/2%) of the left upper extremity and one percent (1%) of the right upper extremity based on the AMA guidelines (Respondent's Exhibit 6). Petitioner's counsel objected to the admission into evidence of this report on the basis it was a Petrillo violation. The Arbitrator overruled this objection on the basis that Petitioner signed a medical authorization on February 18, 2012, which was never revoked by Petitioner (Respondent's Exhibit 5).

At trial, Petitioner testified that both elbows are tender to the touch and get sore, in particular, after he completes his shift at work. He also testified that his right little finger will go numb

when his elbow is fully extended. Petitioner also complained of some weakness in his left hand with a periodic complainant of some tingling with overuse. Petitioner agreed that he was able to perform all of his job duties and meet all of his production quotas.

Conclusions of Law

The Arbitrator concludes that Petitioner has sustained permanent partial disability to the extent of 15% loss of use of the right arm, 15% loss of use of the left arm and 12 ½% loss of use of the left hand.

In support of this conclusion the Arbitrator notes the following:

Dr. Brown examined Petitioner and opined that there was an AMA impairment of one and one-half percent (1 1/2%) of the left upper extremity and one percent (1%) of the right upper extremity.

Petitioner is a truck tire builder and has worked in that capacity for approximately 20 years. This job does require the repetitive use of both upper extremities. Petitioner testified he still has symptoms in both upper extremities at the end of his shift.

At the time of the manifestation of these injuries, Petitioner was 57 years of age so he will have to live with the effects of this injury for the remainder of his working and natural life.

There was no evidence that this injury will have any effect on Petitioner's future earning capacity.

Petitioner was diagnosed with bilateral cubital tunnel syndrome and left carpal tunnel syndrome and these conditions required surgery. The cubital tunnel surgeries performed on both arms required transposition of the ulnar nerve and lengthening of the flexor pronator tendon. Petitioner still has some residual complaints that are consistent with the injuries he sustained.

William R. Gallagher, Arbitrator